



Government of Newfoundland and Labrador

**An Analysis of
The Impact of a Nova Scotia Type
Offshore Agreement on Newfoundland**

**Petroleum Directorate
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Highlights

Resource Management

- Federal Government has complete control over offshore decisions through Federal Minister's veto over the federal/provincial Board (page 5).
- Canada/Nova Scotia Board is not independent, is not a full-time body, does not have its own staff and has a majority of federal appointees in any event (pages 10-12).
- All senior level federal officials in COGLA will be in Ottawa (page 9).
- Agreement lacks strong environmental safeguards (page 20).

Revenue Sharing

- Newfoundland would only get 41% of government revenues from Hibernia and 12% of government revenues if reserves total 8 billion barrels (page 40 and Figure 3.4.1).
- 41% of Hibernia might allow the reduction of the Newfoundland sales and income tax to national average for life of Hibernia but little else would improve (page 40).
- No sharing "as if on land"; provincial share of oil revenues will be capped at 140% of national average fiscal capacity no matter how much oil is found; Alberta is now in excess of 230% (pages 28 and 36).

- If offshore oil and hydro development take place simultaneously, provincial share of field in addition to Hibernia could be virtually wiped out completely simply because we got to 140% by non-oil revenues (pages 38 and 40).
- Whole Nova Scotia revenue scheme is up in the air as Ottawa can modify it legislatively at a future date without Nova Scotia's consent (pages 2 and 28).

Industrial Development

- Province will have no control over the choice of offshore technology or level of local spinoffs and employment (page 21).
- No specific industrial development fund proposed (page 24).
- "New" local refiners and users (including perhaps even Come by Chance) will not have access to offshore oil until rest of eastern Canada supplied (page 26).

Permanance

- The essence and effect of the Agreement can be changed by Ottawa by unilateral amendments to its legislative foundations (page 2).
- Agreement is not legally enforceable (page 41).
- Ottawa would be in a position to unilaterally redraw our offshore boundaries with Quebec and Nova Scotia after the agreement has been signed (page 41).
- Agreement could be repudiated in whole by Ottawa at any time without penalty (page 44).

1. Introduction:

The signing of the Canada-Nova Scotia Agreement on Offshore Oil and Gas Resource Management and Revenue Sharing, on March 1, 1982 (set out in Appendix A and hereinafter called the "Nova Scotia Agreement") has raised questions as to the impact of this type of agreement would have on Newfoundland.

It is only natural that this sort of agreement has been contrasted with the provisions of the Newfoundland Compromise Proposal of January 25th. (set out in Appendix B and hereinafter referred to as the "Newfoundland Proposal").

This report is intended to provide an analysis of the Nova Scotia Agreement highlighting the joint management and revenue sharing provisions as they would affect Newfoundland. Section 2 of the report will provide a description and analysis of the joint management provisions of the Nova Scotia Agreement.

Section 3 of the report will address the issue of revenue sharing by analysing the financial implications of this type of Agreement for Newfoundland. In providing this assessment, the report will address the fairness of the split of government revenues which is proposed. It will also focus on the key issue of whether it is fair to use the limited "fiscal capacity" concept as a factor in determining the Province's revenue entitlement (ie. to establish another form of equalization) as opposed to using a concept which includes both fiscal maturity and economic maturity.

2. Resource Management Structure and Process:

2.1 General Description of Management Structure and Process:

2.1.1 The Legislative Framework:

Implementation of the Nova Scotia Agreement's joint management provisions will be based primarily on federal legislation; the necessary Nova Scotia legislation will simply automatically adopt the provisions of the Canada Oil and Gas Act and the Oil and Gas Production and Conservation Act as they may be amended by Ottawa from time to time (Clause 15 (c)).

Short of repudiating the Agreement, the province has no choice but to keep its legislation in place automatically adopting all amendments made by the Federal parliament even if disagreeing with their intent or effect. Such amendments may relate to the very sections under which the various management structures established by the Nova Scotia Agreement are supposed to work. There is, then, no certainty to the arrangement and the following analysis must bear this in mind.

2.1.2 Organizational Structure Generally:

The basic decision-making agencies recognized under the Agreement are described below. This description is in some ways tentative as the Agreement is unclear as to just how certain bodies will in fact operate and relate, one to the other. The one sure fact is that in every respect the federal minister has the final say.

The four principal administrative agencies under the Agreement are, (1) the Canada-Nova Scotia Offshore Oil and Gas Board (the "Board"); (2) the Canadian Oil and Gas Lands Administration (COGLA) and the COGLA Nova Scotia Office (CNSO); (3) the Nova Scotia Petroleum Directorate (NSPD) and (4) the National Energy Board (NEB).

Aside from these four agencies, there is also provision for a number of advisory committees within the Agreement. The advisory committees include the Canada-Nova Scotia Executive Committee on Economic and Social Benefits and the Nova Scotia-Canada Fisheries Advisory Committee. In addition, the Board is to recommend a co-ordinated federal/provincial environmental assessment hearing process.

Finally, the Agreement also proposes the establishment of an Education and Training fund and a Research and Development Fund to be administered on a joint federal/provincial basis.

The exact shape and function of these advisory bodies do not seem to have yet been established. Their overall impact is described in full below.

2.1.3 Functions of the Canada-Nova Scotia Offshore Oil and Gas Board:

The Board is to be comprised of five members, three of whom shall be federal representatives with the remaining two positions occupied by Nova Scotia nominees.

The Chairperson of the Board will be the Chief Administrator of COGLA who reports to the federal Deputy Minister of Energy Mines and Resources.

All other Board members must be employees of the Federal or Provincial governments. Three members, including the Chairperson, will constitute a quorum for the Board. Consequently, meetings may be held without the two Nova Scotia representatives even being present.

The Board shall report to, and shall act under the authority of, the federal Minister of Energy, Mines, and Resources. The federal Minister, acting alone, will execute all interests (that is, issue all offshore licences, permits, leases, etc. to oil companies) except where he has delegated this power to the Chairperson of the Board.

The Board will set its own rules of procedure and thus Ottawa, through its majority, will effectively control the style of its operations. This is a crucial omission in that the role of the two Nova Scotia members may be severely limited by federally established procedural "short-cuts" of various types.

Under the Newfoundland Proposal, certain critical rules of procedure (eg. the situations when a public hearing is required) would be established by the two governments as part of the initial political settlement, leaving the Board to establish the more routine parts of its overall procedure free from government interference.

The Board as set up under the Nova Scotia Agreement is, in essence, an internal federal administrative body in which the province has two representatives. Theoretically the Board is located organizationally (at least for some purposes) between

the federal Minister of Energy Mines and Resources and his administrative staff, (COGLA).

Within this very limited role, the responsibilities of the Board are said to be as follows: (Clause 3(c))

- (1) periodically reviewing of the objectives of both parties;
- (2) advising the federal Minister with respect to oil and gas resource management matters as set out in the Agreement;
- (3) collecting and administering the federal basic royalty and the federal progressive incremental royalty (PIR) as set out in the Canada Oil and Gas Act;
- (4) "directing" the activities of COLGA and its Nova Scotia office CNSO;
- (5) making initial decisions (subject to ministerial override) under certain sections of two existing pieces of federal legislation, the Canada Oil and Gas Act and the Oil and Gas Production and Conservation Act. With respect to all other provisions of these Acts, the Board has an advisory role only.

The Board has no role with respect to federal legislation or regulatory processes outside of the two aforementioned Acts (eg. the National Energy Board Act and Regulations).

Of these five responsibilities, items (4) and (5) are of most concern:

Two aspects of the Board's activities stand out for detailed analysis:

(1) The Federal Minister's Control of the Board

Under the Nova Scotia Agreement, the federal minister has the unfettered ability to overrule any decision of the Board or even make a decision before the Board has met on the matter (Clause 3(f)).

(2) The Limits of the Board's Decision-making Powers

The sections of the Canada Oil and Gas Act and the Oil and Gas Conservation Act for which the Board has an involvement cover a number of the major ministerial decisions under these acts. In contrast, the Board is given only an advisory role with respect to principal ministerial decisions during the production phase of offshore development.

For instance, the Board will not be involved in determining the rates of production per well, modifications of production profiles or techniques, or the prevention of waste through landing and use of natural gas as opposed to its flaring. Although apparently some of the regulatory staff overseeing the production phase of an offshore operation will be located in Halifax, the senior decision-makers on these regulatory issues will be in Ottawa.

The impact of these areas of production regulation is quite complex and significant. For instance, it is possible to construct a production profile which will tend to generate a peak in revenues and then a sharp falling off. As will be explained later, during such periods because the "fiscal capacity" of Nova Scotia in that particular year has exceeded the specified limits, all surplus revenues beyond those necessary to meet a 140% a fiscal capacity "cap" would go completely to the federal government.

Consequently, the federal government has a vested interest in "high-grading" the field at a high production rate. The gradual depletion of the field over a longer period would see a larger share of the revenues go to the Province. Consequently

the province's effective involvement in such decisions is critical to the protection of its potential revenue stream.

(3) The Provincial Members "Suspensive Right"

Under the Agreement's scheme, the province's lack of real decision-making power on the Board (and the Board's subordinate relationship to the federal Minister, in any event) is supposedly offset by a provincial "suspensive right". For this reason, the adequacy and implications of this device bears close examination.

Under the agreement, the effective date of certain of the decisions of the Board and of the Minister may be temporarily delayed by a so-called "suspensive right" available to the two Nova Scotia members. This right may be invoked following a majority decision of the Board's three federal members under certain sections which is objected to by the Nova Scotia members but agreed to by the federal minister.

The length of the period during which the effect of the minister's decision may be put in suspension varies up to a maximum of 1 year and the total of individual periods of delay resulting from the repeated exercise of the Nova Scotia suspension rights, with respect to a "specific interest" (which is not defined in the Agreement) it is 18 months (Clause 3(d) (vi)).

If the term "specific interest" equates to the area covered by an original Exploration Agreement (some of which off Nova

Scotia cover 5 million acres), the right to exercise a suspensive right will for large areas be quickly exhausted.

The use of "suspension rights" in addition to fostering a negative acrimonious atmosphere, would not in any event be a really effective tool, given the limited time of suspension. An exercise of the "suspension rights" will serve to publicise how the province's interests and concerns had been ignored by the federally dominated Board but it is unrealistic to think that the federal resolve to proceed with their decision will thereby melt away.

The concept of having a "suspension right" exercised by the provinces "representatives" and the presence of the head of COGLA as chairman of the Board, also demonstrates the high level of direction which Board members will receive from their nominating governments on a day-to-day basis. This underscores the fact that the proposed Board is not an independent (or even semi-independent) body in any sense.

In essence, only two votes being cast, a federal vote and a provincial vote, with the federal Minister always having the "final say" if the province disagrees with what the head of COGLA (as supported by two federal nominees and as instructed by the federal Minister) wishes to do.

Institutionalizing these confrontational tactics will be counter-productive and will only serve to put added uncertainty and risk upon the offshore operators and service industries without any commensurate increase in provincial power or benefit.

2.1.4 Functions of the Canada Oil and Gas Lands Administration

(COGLA) :

COGLA is the federal agency which was established prior to the Nova Scotia Agreement to administer all oil and gas activities on federally owned lands in Canada's arctic and offshore regions. Under the Nova Scotia Agreement, Nova Scotia accepts COGLA as the sole agency for day-to-day offshore administrative matters.

COGLA is required to set up a Nova Scotia office (CNSO) to carry out such functions as offshore inspection activities, curation of information and the carrying out of related geological and geotechnical studies for the Nova Scotia offshore area. It seems that CNSO activities will be directed towards the more technical and routine administrative aspects of COGLA's responsibilities in the Nova Scotia offshore and that all policy oriented positions will be located in Ottawa.

Ottawa's failure to agree to establish a very strong resource management group in the Province is unfortunate.

In an industry such as the offshore oil industry, with its high level of technically-oriented regulation, the presence of a strong highly-trained regulatory agency is an irresistible magnet to senior oil company technical and managerial personnel. These oil company officials, in turn, draw the purchasing and management staff of oilfield contracting companies, creating a vibrant, mutually reinforcing oilfield business community.

This sort of development grew up over time in Calgary, centering on the Alberta Government's Oil and Gas Conservation

Board which was located in that city. The idea was picked up from there and deliberately used by the Government of Norway as a tool of regional economic expansion by moving the entire staff of the Norwegian Petroleum Directorate from Oslo to economically depressed Stavanger.

2.1.5 The Interface Between the Board and COGLA:

While COGLA will provide the Board with "information reports", the Board will apparently not have full regular access to all offshore information (Clause 4(a)).

The Agreement states that the Board shall have the power to "direct" COGLA (Clause 3(c)(iv)) and that COGLA shall report to the Board on those matters for which the Board has responsibility (Clause 4). Further, COGLA will implement decisions of the Board, which, as described, are subject to the overriding powers of the federal Minister (Clause 4 (a)).

It is not clear what form the Board's "direction" of COGLA will take, in view of the fact that COGLA also reports in a traditional manner to the Minister and that COGLA is given the responsibility for providing secretarial and staff support for the Board.

In addition, while COGLA and the Board are supposed to work together on some sections of the legislation, on others COGLA does not have to report to the Board at all.

Because offshore management is an integrated process, it is completely impractical to have COGLA report to the Board for some matters but not other decisions which relate to essentially

the same operation. There could be a continual fight between COGLA and the Board as to what section of the Act COGLA is acting under.

It is significant that COGLA is solely responsible for staffing the local administrative positions of the CNSO and the Board's Secretariat. The Board's staff will be federal civil servants.

Under this approach, COGLA can easily determine the degree to which the Board and CNSO are capable of performing their duties through controlling the level of funding provided to these institutions. By this means, COGLA can limit the range of managerial, technical and analytical skills available directly to the Board.

This feature, along with the fact that CNSO "reports functionally" to the chairperson of the Board (i.e., the head of COGLA), and not the Board itself, serves to emphasize that the provincial role is one of form and not substance, void of any real ability to realize provincial policy objectives through joint management of the offshore.

The geographic separation of the COGLA personnel responsible for policy planning in Ottawa from the provincial members of the Board in Halifax will also create problems in the provision of information and maintaining effective lines of communication.

Indeed far from being completely rooted in the social environment which will be crucial to many issues like determining the proper pace of development, the Board itself is only to meet in Halifax "as often as practical" depending on

the "convenience" of the federal members at the federal chairman's "discretion" (Clause 3(b)).

The implication of this distribution of administrative control and decision-making power is that the province will always be at a disadvantage in influencing the management strategy of the Board.

The simple fact that the Board is to meet "a minimum of six times annually" demonstrates that it is not intended that the Board be a full time body and will thus be unable to keep the kind of on-going and vigilant overview which offshore issues will require.

In contrast, a balanced, full time Federal-Provincial decision-making body located in the Province which is subject only to limited overriding powers held by both the federal and provincial Ministers would be able to effectively and fairly deal with such issues.

Under this alternative, (which essentially reflects the Newfoundland compromise proposal of January 25th), provincial and federal concerns will have an equal chance of being satisfactorily accommodated before the initial independent decision of the Board is made.

Once appointed to the Board, all members would have to be independent during tenure and free from instruction as to how they would vote on any particular matter. The potential for subsequent veto actions and associated regulatory delay would thus be much lower because of the more conciliatory forum in which the Board's decisions were made. The prestige of the

Board would help ensure that, even where permitted by the agreement ministerial vetos would be seldom used.

Such a Board could reasonably be expected to gain the same level of respect and success as the Alberta Energy Resources Conservation Board which works on this basis, though on the purely provincial level and has helped create a healthy regulatory climate for the private sector in Alberta.

Under the Newfoundland Proposal, because the Minister would in exercising his veto have to demonstrate that the Board's decision was inconsistent with mutually agreed upon detailed Offshore Development Objectives (reflecting both national and provincial goals), the danger of its capricious use would be small and the country will be assured that the Newfoundland offshore was being developed for the benefit of the people of Newfoundland and the rest of Canada.

In essence, the Newfoundland-proposed Board would not only be independent of COGLA but would have its own technical staff and budget and thus would not be under the complete sway of either one of the governments.

2.1.6 The Functions of NSPD:

The Nova Scotia Petroleum Directorate (NSPD), is the provincial agency designated by the Nova Scotia government to coordinate its involvement in the offshore and under the Agreement (Clause 5). Presumably its chief function will be to advise the Nova Scotian Minister as to how he should direct the province's two representatives on the Board. However, the NSPD has no powers or formal functions per se under the Agreement.

2.1.7 The Functions of the NEB:

While not covered by the Agreement in any substantive way, the National Energy Board will nevertheless play a substantial role in regulating development in the Nova Scotian offshore. These powers take five principal forms:

- (1) the power to determine exportable surpluses of oil and gas;
- (2) advisory powers in determining the export price for oil and gas;
- (3) a general advisory function regarding national energy issues;
- (4) (as conceded by Nova Scotia in Clause 20(b) regulatory and administrative control over pipelines connecting offshore fields with the onshore areas of the Province; and
- (5) when so ordered by the Federal Cabinet, jurisdiction to supervise and control any interprovincial or international trade in oil and gas.

The Agreement's failure to address how the NEB will fit into the overall scheme sets up great potential for confusion and delay.

2.1.8 Functions of Other Agencies:

A Canada-Nova Scotia Executive Committee on Economic and Social Benefits, will be established to prepare general objectives relating to the use of labour, goods and services, education and training, and research and development (Clause 22). It will also recommend a process to ensure effective cooperation between the parties involved and identify possible initiatives to meet the proposed Offshore Development Objectives which are set out in very general terms in Schedule

II to the Agreement. These development objectives are, in reality, too general to constitute even the framework of an offshore development strategy. The Committee must report by January 1, 1983, and in addition, will assess the financial implications of related infrastructural costs.

The Committee is advisory only and has no power to implement its recommendations nor will such recommendations, or the Offshore Development Objectives themselves, for that matter, be legally binding on the Board, or on the federal government.

Similarly, no decision-making power or even specific mandate has been given to the Nova Scotia - Canada Fisheries Advisory Committee which is to be established "to give advice on matters relating to the fishery" (Clause 9).

It should be noted that this advisory committee has no power to create and administer compensation schemes for damage arising from offshore oil and gas activities. No provision for payment for the expenses of either of these committees been outlined in the Agreement.

2.2 Analysis of Some Specific Resource Management Issues:

2.2.1 Federal Emphasis on Ministerial Discretion:

Federal-provincial negotiations on offshore joint management offers a unique opportunity for the various parties to establish regulatory regimes tailored to the specific needs of the physical, political and business environment of each of

the two provinces principally involved - Nova Scotia and Newfoundland. A Nova Scotia-type Agreement does not capture this opportunity, at least insofar as the situation in Newfoundland goes.

Indeed if we assume that Nova Scotia-type agreement primarily reflects the federal government's approach to offshore resource management, the following statement made by the Newfoundland Provincial Government at the 1974 National Energy Conference would seem equally relevant today:

The defective management of the Federal Government has made negotiations between Ottawa and Newfoundland very difficult. Not only is Newfoundland attempting to obtain adequate control over the management of her own offshore resources, Newfoundland is also attempting to correct the defects of the Federal Government's permit system.

Academic and private sector criticism of the existing federal regulatory regime as exemplified by Bill C-48 - the Canada Oil and Gas Act - cornerstone of the National Energy Program - has repeatedly stressed the highly discretionary and unfettered political power held by the federal Minister under that Act.

The unfettered nature of the Minister's powers was very well demonstrated by the July/82 allocation of 4.7 million acres on the Scotian Shelf to Petro Canada (50%), Bow Valley (25%) and Husky (25%) where the allocation was made outside the supposedly normal process, ignoring its requirement for a public proposal call.

The Nova Scotia Offshore Agreement adopts this

objectionable federal legislation in total and adds only another level of decision-making at the Board stage with no increase in procedural protection for the private sector or the public interest. Under Clause 3(f)(i) of the Agreement the Minister has the unfettered right to overrule the Board without needing to justify his decision in any way.

In contrast, Newfoundland's proposals rest on a resource management philosophy of unbiased decision-making by an independent quasi-judicial body, in many cases after the holding of public hearings. The Board's decisions can only be overruled by the Federal and/or Provincial ministers after a strict procedure has been followed and a full justification has been made by the objecting minister in terms of agreed upon criteria.

2.2.2 A Highly Fragmented Regulatory Scheme:

The convoluted system of advisory and other agencies does not in any way promote an effective provincial voice in offshore management.

In addition, the Agreement only deals with a limited number of federal and provincial regulatory activities in the energy policy field. In particular, the Offshore Oil and Gas Board is given advisory and decision-making power only over certain provisions of the federal Canada Oil and Gas Act and Oil and Gas Production and Conservation Act. There is no significant corordination with other Federal powers related to such issues as energy exports, the interprovincial trade in energy products

and energy taxation and pricing; there is great potential for regulatory overlap and conflict.

For example, the regulatory powers of the NEB and the Offshore Oil and Gas Board are inter-related to such a degree that any development proposal involving a pipeline transportation system or an oil and gas export component could end in an administrative stalemate, or at least be subject to severe regulatory delay.

Seemingly, no attention has been paid to the numerous requests from academic and industry spokesmen for the creation of a streamlined approach to regulatory approval involving a single "window" through which offshore operators can interact with government.

2.2.3 Lack of Local Control over the Pace of Development:

If there is one issue which has differentiated the resource management philosophy of the Federal Government from that of the Government of Newfoundland and Labrador, it is the issue of controlling the pace of development. The proper level and pace of offshore developments must inevitably reflect a balance between a number of equally legitimate, national and provincial objectives. The process of resolving such diverse questions as national energy self-sufficiency and local negative social impact will be critical to truly proper resource management and both governments must have an adequate say in that resolution.

However, it is clear that the province would have little if

any ability to influence the pace of offshore development under a Nova Scotia-type Agreement.

Experiences in Scotland, Norway and Mexico have demonstrated the dramatic social consequences of offshore oil and gas development; both as a potential danger and as a potential tool for solving social and economic problems. Because the coastal province closest to the resource will be forced to pay the major portion of both social and infrastructural costs associated with the offshore development, it is essential that the provincial government have significant decision-making powers so as to mitigate such negative impacts and use offshore-related industrial activity as the centerpiece of a broadly based attack on unemployment within the province.

The following quote, again taken from Newfoundland's position paper at the 1974 Federal-Provincial Energy Conference, sums up the overall impact of a Nova Scotia-type agreement.

If Ottawa were to succeed in its present claims, it would control not only Newfoundland's offshore mineral resources, but also the level and kind of onshore activities required to develop these resources and, indirectly, the rate and kind of social change. With no control over these developments, Newfoundland's existing constitutional powers would be severely eroded. In essence, Newfoundland would exist as a province in name only. Such a development would not be in the national interest. The national interest would be better served if offshore resource development occurred in a manner which would contribute to regional development and promote the preservation of strong viable provinces - the cornerstones of Confederation.

A Nova Scotia-type Agreement would severely erode the ability of the Province to help chart its own destiny.

2.2.4 Environmental Assessment and Protection:

The Board is asked to make recommendations with respect to an "advisory process" for the public review of production system options but there is no obligation on either government to accept such recommendations.

While the governments do at least commit themselves to hold a "public review" of some type in Nova Scotia before approving a production system, the details of such review process are not spelled out. It is stated, however, that the review will take place "under the auspices of the Board" which means that it will be controlled by three federal representatives and thus not an independent process (Clause 7).

The two governments also commit themselves to the establishment of a "co-operative" environmental assessment hearing process which meets the requirements of both existing federal and Nova Scotia assessment processes but again gives no indication as to what the final process will look like. Environmental standards are to be "reviewed" by the Board and "appropriate" federal and provincial agencies and the fulfillment of environmental terms and conditions is to be "monitored" by appropriate federal and provincial agencies.

The provisions for impact assessment, review of standards and monitoring of damages are dangerously vague; the enforcement of environmental standards and terms and conditions is not addressed at all by the Agreement.

In view of the critical importance of the fishery to Newfoundland, such laxness is not acceptable.

2.2.6 Industrial Benefits:

Because the Federal Minister will completely determine what a field's development plan will be, the Province will have no real say over the choice of technology or the level of industrial benefits associated with it.

Actually the only specific federal legislation dealing with the objective of optimizing industrial benefits from offshore oil and gas resource development is a very general clause in the Canada Oil and Gas Act. The Agreement does little to extend this requirement and provides only that when reviewing Canada Benefits Plans, the "parties" must:

"give first consideration to services provided from within Nova Scotia and to goods manufactured within Nova Scotia, but only if such goods and services are competitive in terms of fair market price, quality and delivery". (Clause 21 (a)).

This "best efforts" clause, in the context of the Federal Minister's high level of discretion under the "Canada benefits" clause in the Canada Oil and Gas Act, is far short of the detailed pre-tendering consultation, monitoring, audit and enforcement requirements presently included in the Newfoundland and Labrador Petroleum Regulations and working to great effect.

Local preference in the critical petroleum research and development sector is limited to the right to "an opportunity to participate" (Clause 21 (d)).

While Nova Scotia's representative may participate in COGLA's "dealings" with the oil industry, this participation is

limited to an advisory capacity and it is highly questionable, in any event, how effective one such representative could be.

Thus, the Agreement not only fails to improve on the provisions of the Canada Oil and Gas Act, but does not address such secondary mechanisms for influencing industrial benefits as requiring the location of oil company administrative offices in the Province. There is not even a concerted attempt to build up the size and scope of COGLA's administrative offices for the same purposes (see pages 9 & 10 above). The scope of these latter offices will be determined by the Federal government at its discretion and whenever it wishes.

It is not stated whether the limited equity position in offshore fields offered the Province by Ottawa for a price will lead to voice on operating committees in the crucial exploration and development phases when most critical investment decisions are made; presumably if this important right existed, it would be explicitly stated.

The Federal Government agrees to establish a \$ 200 million fund to defray infrastructure costs related to the development of the Venture gas field and other offshore activities. However, because this \$ 200 million will be made available in four equal annual installments of \$50 million each, and because payments will not start until April, 1984, the present value of this sum in 1982 dollars is a mere \$ 121 million (hardly enough to meet the demands of offshore oil in Newfoundland when the St. John's Ring Road will cost \$70 million and the Conception

Bay North By-Pass \$30 million, both of which will be needed to accommodate oil-related development).

While the Nova Scotia government may suggest how the fund is to be spent, the federal government may ignore such suggestions.

In any event, this sum is actually an interest free loan and must be repaid from Nova Scotia's share of offshore oil and gas revenues in ten equal annual installments, commencing in the year after first production from the offshore region commences.

Consequently, such a fund does not represent a commitment by Ottawa to the concept that offshore resources should be used first and foremost for economic development in the adjacent province. Rather, it merely recognizes, but does not deal effectively with, the known fact that offshore development will put intolerable burdens on the infrastructure of the adjacent Province.

The governments agree to establish two other "funds", (one to support Education and Training, and the other for Research and Development), to be "jointly" administered by "appropriate" federal and provincial agencies.

While the Agreement appears to have adopted the concept contained in the 1977 Newfoundland and Labrador Petroleum Regulations in that these funds will be financed by a levy on offshore operations, neither the precise form of this levy, nor the amount, to be collected is specified in the Agreement, and are left to the discretion of the federal government.

The local training "objectives" of the agreement are vague, as is the local hiring preference section which is made "subject to national policies in support of labour force mobility in Canada" and restricted to a federal commitment to "encourage" (rather than "require") the hiring and training of local persons who are qualified (Clause 21 (b)).

No specific industrial development fund is proposed, much less established in a concrete way at a fixed amount. The necessary implication of this analysis is that, at best, the Province will receive little more industrial spinoffs than would be attracted to the Province through normal market forces.

As with all other aspects of the management process, provincial interests are entirely subordinate to federal decision-makers. Consequently, the creation of industry and jobs in the adjacent province will simply depend upon how Ottawa decides spinoff benefits are shared between the adjacent Province and other parts of Canada.

2.2.6 Promotion of Refining and Processing Activities within the Province:

The promotion of the "downstream" industrial potential of offshore oil and gas production depends on a number of inter-related factors from future market conditions in the world refining and petrochemical industries to the existence of a preference in the supply of feedstock for local users.

The general implication of these factors is that "downstream" development in Newfoundland will be undertaken under highly competitive conditions, and that control of the

availability and price of feedstock from the offshore will be the critical tool in encouraging local development. This is certainly the case in Alberta where provincial control of natural gas feedstock has been used to build a world-scale petrochemical industry.

However, under a Nova Scotia-type agreement, Ottawa alone will determine by what means offshore oil and gas will be transported and thus where it will be refined or processed as the case may be. Similarly, the ability of the federal Minister, to dictate the terms and conditions under which royalty oil or gas can be taken "in kind" instead of "in cash" will determine the eventual location of industry using that part of the resource.

Moreover, there is no restriction on the federal Cabinet's ability to direct the National Energy Board to assume supervision and control of the movement of crude oil or domestic gas out of the offshore area.

Indeed, policies developed by the National Energy Board, aimed at securing a long term supply of feedstock for Canada's existing (mostly Quebec-based) refining and crude oil-based petrochemical industry, may seriously damage the potential for downstream development within Newfoundland.

Under the Nova Scotia Agreement, Nova Scotia-based buyers will have a first option to buy, on a commercial basis, hydrocarbons produced from the offshore area but only to the extent that offshore production is required to meet end use consumption demand and feedstock needs of "existing" industrial

facilities in Nova Scotia" (Clause 11).

Ambiguity exists in determining whether the concept of existing industrial facilities would include a mothballed refinery such as Come by Chance, and whether only industrial facilities existing as of the signing of the Agreement, or such facilities as exist from time to time, will be given preference under this clause.

However, what is clear is that under the Agreement, new Nova Scotia-based, industrial buyers will not be given access to offshore production unless "such feedstock is excess to feedstock required to meet the demand of presently existing industrial capacity in Eastern Canada".

This means that unlike Alberta, which can use its oil and gas resources to start new industries which can compete with existing refineries in Ontario and Quebec, Nova Scotia can only hope that more oil and gas is found off its coasts than Ontario and Quebec will need. This is hardly consistent with a commitment to using the resource to promote local economic development.

3. Revenue Sharing Provisions:

3.1.1 Introduction:

Resource revenue sharing has been a key issue in all negotiations between the provinces and federal government respecting petroleum and a major cause of federal/provincial disputes. In recent years the federal government (and to some extent all ten provincial governments) have suffered from increasing costs and lower revenue yields. The results have been increased taxes and where this was not sufficient, governments have resorted to deficit financing. Deficit financing cannot be sustained by any government for obvious reasons, hence the need for new, secure sources of revenue that are not generally applicable to the population at large, more especially given the over exploitation of the lucrative income and consumption taxes.

Constitutionally natural resources are the domain of the provinces. The economic crunch that worsened at the end of the seventies and has continued into the eighties saw the federal government initiate action, in the form of the National Energy Program (NEP), to obtain a greater share of traditional provincial resource revenues. It is for this reason that revenue sharing arrangements have been the cornerstone of many recent resource agreements between Ottawa and the provinces.

The Canada/Nova Scotia agreement is no exception. However, the arrangements depart substantially from those made with the three Western provinces.

Firstly, and most importantly, the revenue sharing provisions do not include all government type revenues generated by offshore petroleum development.

The term "offshore revenues" to be shared under and as defined by the Agreement is a completely new, and wholly artificial, federal creation. In actual fact, federal legislation is set up in such a way that a large part of the total take is collected under such devices as federal corporate income tax and Petro Canada, and is thus not shared at all with the province under the Agreement.

Indeed, because Ottawa will have full control over amendments to the relevant legislation, the amount allocated to the so called "shared" category can be varied by Ottawa at any time. Nova Scotia has no security at all as to its eventual revenue stream.

This is a radical departure from the Agreements reached with the western producing provinces where the argument has historically been and remains, what is the most appropriate split between Ottawa and the producing province of the "total government take", a "total pie" that includes federal income taxes and the share of federal Crown Corporations derived under legislative privilege.

Secondly, unlike the revenue sharing arrangements with Alberta, Saskatchewan and British Columbia the amount of revenue a province receives under a Nova Scotia-type agreement is "capped" by the level of a province's per capita fiscal capacity relative to Canada as a whole (i.e., the national

average per capita fiscal capacity) as measured by the equalization concept.

Thirdly, in spite of the fact that the Board will collect royalties and the PIR for distribution to the Province (Clauses 3(c) (iv) and 15(i)), given the federal nature of the Board even those revenues collected by the Board and passed on to the Province cannot be said to be the Province's "as of right" and is actually just another form of equalization, paid not from the general wealth of the country, but from the Province's own resources.

3.1.2 Crown Participation:

Under the Canada Oil and Gas Act, the federal government has reserved a 25% crown interest in all oil and gas fields found on Canada Lands, an amount that is referred to throughout this report as the "Crown Share". This interest applies to lands whether obtained through the normal bidding procedure or through special allocations by the Minister outside the normal call for proposals which can either be to a private party or to Petro Canada.

This 25% crown share is also in addition to any interest the Minister may allocate under a section of the Federal Act to PetroCan to make up a consortium's Canadian ownership requirement (CORE).

It is important to note that Nova Scotia's right to share in the 25% crown share does not affect Ottawa's ability to give Petro Canada or another federal crown corporation an additional

special interest in offshore lands nor does it give Nova Scotia a right to share in such extra ordinary allocations of valuable rights.

Nova Scotia's only protection against the allocation of excessive rights to Petro Canada is contained in a statement that says "it is not the intention of the federal government in the management of offshore regime to make available substantial lands to a federal ... crown corporation or ... entity for the purpose of subsequent retransfer to other private or public entities" - a restriction which hardly troubles Petro Canada who, no doubt, generally wishes to keep all the lands they are allocated in any event.

Prior to the transfer or disposition of the crown share, the Nova Scotia government has the right to acquire a 50% portion of the 25% Crown Share in respect of a natural gas field, (i.e. 12 1/2%) but only a 25% portion of the Crown Share in respect of an oil field (i.e. 6 1/4%). This discriminates against an oil prone area like Newfoundland, in favour of a gas-prone area like Nova Scotia.

If the Nova Scotia government decides to dispose of its Crown Share within ten years following the date of purchase, the federal government shall have the right of first refusal to purchase that interest at "the amount paid of the purchase price plus improvements". Unfortunately the term "improvements" is not defined and cannot be assumed to mean the true increase in "market value".

Moreover, Nova Scotia will have to reimburse the federal

government for its share of certain payments made by the federal government to the original private permit or licence holder including a share of the petroleum incentive payment (PIP).

3.1.3 Pricing:

The wellhead price for oil and gas produced in the Nova Scotia offshore area will be established by the federal government; the Nova Scotia government will only have a right to be "consulted" on this crucial decision.

This, in effect, gives the federal government the ability to unilaterally decide the share of the true market value of offshore oil and gas that will go to the consumers of Central Canada as opposed to being shared between the federal government and Nova Scotia.

Such critical pricing decisions are not even subject to Board scrutiny or the temporary suspension mechanism. This is a far cry from the negotiating process between Alberta and Ottawa over the proper wellhead value of Albertan oil and gas.

3.1.4 Revenue Sharing Provisions:

Revenues flowing to governments from the development of the hydrocarbon resources offshore Nova Scotia will be determined by provisions in the Canada Oil and Gas Act and the Federal Income Tax Act as they will be amended from time to time by Ottawa acting alone.

It is impossible to predict what will be the type and level of revenue generating mechanisms Ottawa will establish in the late 1980's and into the '90's because the present mix is subject to unilateral federal change.

Keeping this fundamental fact in mind (and assuming, for the purpose of this analysis, that present mechanisms and rates stay in effect) the revenues designated in the Agreement that may be shared with the Nova Scotia government are as follows: (Clause 15(c):

- (i) the basic royalty;
- (ii) the progressive incremental royalty (PIR);
- (iii) revenues equivalent to those which would be generated by the provincial corporate income tax if applicable;
- (iv) revenues equivalent to those which would be generated by the Nova Scotia retail sales tax, if this tax were applicable;
- (v) bonus payments; and
- (vi) rentals and license fees to the extent that these instruments generate revenues surplus to the "administrative costs" (undefined) pertinent to the offshore region.

It is important to remember that the above list does not include all of the "total government take" from hydrocarbon resource development offshore Nova Scotia. Excluded from the list are several sources that will accrue exclusively to the Federal Government, for example:

- (a) Federal Corporate Income Tax;
- (b) Natural Gas and Gas Liquids Tax;
- (c) Crown Share (ie. Petro Canada).

Others are sometimes exclusively federal (e.g., petroleum and gas revenue tax (PGRT)).

Indeed as will be seen below, there is actually no guarantee in the Agreement, for a given field that any of these revenues will go to Nova Scotia, as the total amount of offshore revenues which the Province is entitled to, depends entirely on the level of its fiscal capacity.

Under the Agreement, Nova Scotia's entitlement is directly related to how its economy performs over the life of the field as measured in terms of fiscal capacity and unemployment. Generally speaking, these factors combine to cut the provincial share down from what it would have otherwise been.

The Agreement states that the sharing of revenues shall be reviewed by the parties five years after oil and gas production begins from the region, and at five year intervals thereafter. However, because the review procedure is advisory only, any change in the revenue sharing agreement itself is completely subject to Ottawa's approval.

3.1.5 Scenarios Analysed:

In analysing the implications of the Agreements' revenue sharing provisions for Newfoundland, several scenarios were developed. In total, some 12 different cases were analysed using several sophisticated computer models developed by the Province's Petroleum Directorate. The "cashflow" model has been used many times in the past and is generally accepted as being the state-of-the-art in so far as accuracy and

comprehensiveness in the economic analysis of offshore petroleum development is concerned. A second model was developed exclusively to analyse the revenue sharing implication of the Nova Scotia Agreement on Newfoundland.

The nature of the revenue sharing arrangements are such that the share of revenues to which a province would be entitled will decrease as its per capita fiscal capacity increases from time to time. Our share would also be to a slight degree higher if our unemployment rate remains higher than the national average. Consequently, in developing the scenarios to be included in this analysis, it was necessary to take into consideration variations in both the size of revenues, the factors influencing provincial fiscal capacity (ie. general growth of the provincial economy) and the probable unemployment rate.

In conjunction with the above factors, three possible levels of total reserves were analyzed:

- (1) Case A assumes the development of the Hibernia oil field only, with a total reserve of 1850 billion barrels;
- (2) Case B assumes the development of the Hibernia oil field, plus the development of three additional Hibernia type oil fields, a 500 million, a 750 million and a 1 billion barrel oil field. For Case B, the total reserve estimate is approximately 3 billion barrels;
- (3) Case C assumes the development of the Hibernia oil field, plus the development of 7 additional Hibernia type oil fields, three at 500 million, two at 750 million one at 1 billion and a 2 billion barrel field. The total reserves estimate associated with Case C is approximately 8 billion barrels.

In arriving at the above total reserve scenarios, a number of assumptions relating to geological potential, future exploration activity and development potential were obviously made. The 8 billion barrel reserves estimate used in Case C is within the current Newfoundland offshore estimate of 15 billion barrels at a 50% probability level.

The total reserve estimates for Cases B and C is directly related to the number of commercial discoveries which can be expected from the low and high exploration activity forecast between now and 1990.

With regard to development potential, it was assumed that only fields which contain oil and are of at least 500 million barrels in size will be developed. It is assumed any gas discoveries made over the next eight years offshore Newfoundland will not be commercially developed.

3.2 Fiscal Capacity and Equalization Defined:

The level of a province's per capita fiscal capacity will play a critical role, and, more than any other factor, dictate the amount of revenues a province will receive. Consequently the concept has been subjected to close examination.

Fiscal capacity can be defined under the Nova Scotia Agreement as the ability of a government to raise revenue from economic activity within the jurisdiction of its revenue raising authority.

Under the agreement, the ability of Nova Scotia to raise revenue is measured against the country as a whole or put

another way the fiscal capacity of Nova Scotia is matched against the national average fiscal capacity.

The national average per capita fiscal capacity is a measure of the average revenue raising capacity of a theoretically "perfect" province, in Canadian terms, or a province that has been endowed with an average amount of natural resources, capital and other items that comprise the economy. The per capita fiscal capacity of a province is a measure of that province's revenue raising capacity based on prevailing economic conditions.

The economies of Canadian provinces differ for many reasons, but, primarily because they are not all endowed with the same natural resources, their differing economic histories and because of where they are located geographically. Hence the per capita fiscal capacity of each varies considerably as is evident from Table 3.2.1. This table estimates and compares selected provinces' historical per capita fiscal capacity with the national average per capita fiscal capacity from 1977/78 to 1980/81, using an equalization type formula as required by the Nova Scotia Agreement.

Table 3.2.1

Estimated Per Capita Fiscal Capacity
Historical Interprovincial Comparison

Year	National Average	NFLD.	N.S.	ONT.	SASK.	ALB.
1977/78	100%	58.0%	64.0%	95.0%	101.0%	227.0%
1978/79	100%	57.0%	64.0%	93.0%	104.0%	229.0%
1979/80	100%	57.0%	64.0%	92.0%	101.0%	230.0%
1980/81	100%	55.0%	63.0%	91.0%	103.0%	237.0%

Under the Canada/Nova Scotia Agreement, a province continues to share in offshore revenues up to the point where per capita fiscal capacity is 130% of the national average per capita fiscal capacity. After the 130% level a province will continue to share a retail sales tax and corporate income tax equivalent and then only to the 140% level.

After this level of fiscal capacity has been reached, the Province will not share in any incremental oil revenues above those necessary to maintain the 140% level.

3.2 Problems Using Equalization Concept to Measure Fiscal Capacity:

There are a number of problems associated with using the equalization concept to measure a provinces per capita fiscal capacity.

The first is a short term one and occurs because an equalization type formula, as it is used in the Nova Scotia Agreement, is structured in such a way that an illusion of prosperity can be created without a province having achieved any real, significant economic gains.

The Canada/Nova Scotia Agreement measures per capita fiscal capacity in a way that 100 per cent of the so-called "offshore revenues" (Clause 15 (c)) going to a province are themselves included in the determination of that province's per capita fiscal capacity.

If these revenues are large, as is usually the case, the provinces' per capita fiscal capacity could exceed levels specified in the Agreement over a very short time frame and,

if, the province happens to start off from a relatively small base those levels could be reached without the Province ever acquiring any amount of real wealth.

The second problem relates to the potential economic growth because of petroleum development. Economic spin off from petroleum development can cause revenue sources to grow to levels in excess of what would be the case without petroleum. An equalization type formula is designed to measure economic growth to determine whether or not a province should receive equalization entitlements. Growth in equalization sources, as a result of the economic spin off, directly and indirectly related to the petroleum industry, could in Newfoundland's case raise fiscal capacity levels above those specified in the Agreement where, not only the sharing of incremental offshore revenues, but the sharing of all offshore petroleum revenues could cease for whole fields discovered in addition to Hibernia.

Finally, the use of the equalization concept has a disincentive effect in that it can be an incentive to a province to slow or even stop economic growth in certain non-oil areas to prevent a growth in its fiscal capacity and thus a decrease in its share. This is especially true in the case of natural resources where mine openings and hydro projects can be delayed to slow the growth in those tax bases. This would hardly be in the national interest and should not be encouraged.

3.4 Application of Nova Scotia-type Formula to Newfoundland:

The province's policy relating to sharing of offshore oil revenue has always been one that gives both Newfoundland and the Federal Government a fair share.

In the province's compromise proposal of January 25, 1982, the province asked for the same amount that the Western oil producing provinces have been receiving over the years or the "traditional provincial share" of government revenues. Newfoundland would continue to receive this amount until the province achieves both fiscal and economic maturity, after which the provincial entitlement would begin to phase down below the "traditional provincial share".

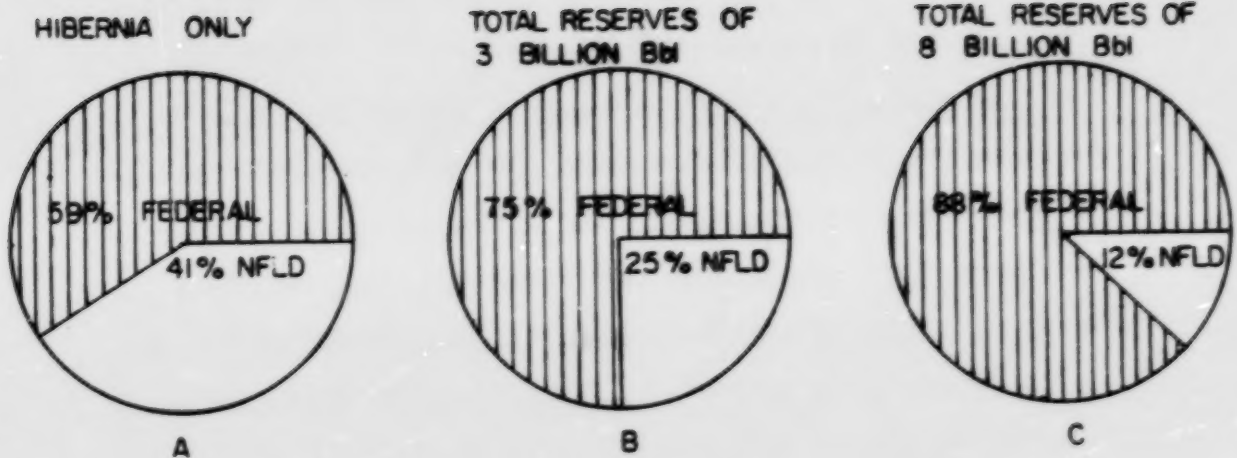
"Economic maturity" is much more than the size of a provincial government's revenues. It is more properly reflected in such factors as the average workers earned income, in the tax burden on citizens, in the level of public debt and in the state of public services. In Newfoundland, all of these must be improved before we can truly become a "have" province.

The formula in the Nova Scotia Agreement does not reflect this reality. The share starts off too small and the phase-down comes too fast and is too abrupt. An analysis of the Nova Scotia formula related to Newfoundland's offshore oil potential, shows that this province would not receive nearly as high a share of revenue as under the Provinces' compromise proposal.

The key findings of the study are contained in Figure 3.4.1.

It shows that based on the revenue sharing provisions in

FIGURE 3.4.1
NOVA SCOTIA TYPE AGREEMENT
ACTUAL REVENUE SPLIT OF TOTAL GOVERNMENT TAKE



the Nova Scotia Agreement, it is estimated that the province would receive 41% of the government revenues flowing from Hibernia, 25% of the government revenue associated with 3 BBBL of oil and 12% of the government revenue associated with 8 BBBL of oil.

However, the situation would be even worse than a 41/59 provincial/federal split would suggest. First, it must be remembered that we would automatically lose our present equalization entitlement. While this is a very worthwhile objective, this loss though hard to measure would greatly reduce our net benefits.

In the Hibernia alone case, we would lose a significant portion of our 41% just to wipe out our equalization. Ottawa would get 59% as its share under the agreement and get the benefit yet of another percentage by way of equalization savings.

Just what could be done with our net total government take from Hibernia to reduce our "have not" status? Simply put, it is estimated that it would probably not even allow us to reduce the sales and income tax burdens on the Newfoundland people to the national average for the 20 year life of Hibernia. It would certainly not leave any extra with which to do all the other things needed to remove our have-not status; let alone put something away in a Resource Depletion Fund for the day when oil, as it must, runs out.

Moreover, because of the way the direct economic impacts of oil and hydro developments in Labrador will be factored into the formula, even the estimated gross shares (i.e., without the

equalization deduction) going to the province set out in Figure 3.4.1 are probably high and the province's gross share could actually be much lower, and indeed under certain economic conditions that are entirely realistic, even the Province's gross share for whole fields in addition to Hibernia could be as low as zero.

4.1 Legal Implementation:

The Canada-Nova Scotia Agreement on Offshore Oil and Gas Resource Management and Revenue Sharing is a political settlement between two governments that, by itself, has no basis in law for enforcement purposes. Strictly speaking, it presently has no more legal status than the abortive Federal-Maritime Provinces Agreement of 1977 or the still formally unrepudiated Clarke letter of September, 1979 for that matter.

As stated in the Introduction to the Agreement, the accord was entered into by the two governments "without prejudice to and notwithstanding their respective legal opinions" and both parties expressed their intent that the Agreement would "survive any decision of a court with respect to ownership and jurisdiction" over the offshore area. How this was to be achieved was not spelled out.

In our parliamentary system where one parliament is not bound by the legislation of previous parliaments, it seems impossible to create such certainty without constitutional entrenchment, as Newfoundland proposes.

As mentioned above, legislative implementation of the Agreement will largely be a federal responsibility with all future amendments made by the Federal Parliament. To achieve uniformity of legislation, the Nova Scotia legislature has agreed to adopt the federal legislation and regulations, including automatically, all future federal amendments without further provincial legislation.

In addition, the federal minister alone will execute "all interests" ie. transfer ownership of lands from the "crown" to the oil companies (Clause 3(b)).

The enactment of such a legislative scheme presumes the existence of at least the semblance of a valid legal claim to the offshore by both parties. If the federal government intends to pursue its present quest for a judicial determination of the offshore ownership issue in parrell with the Agreement, the legal basis for using one or other of the sets of legislation will obviously be repudiated by the Supreme Court of Canada.

Given this sample fact, it is apparent that the continued existence of the legal framework of the agreement (and therefore the stability of the whole regulatory regime, under which hundreds of millions, if not billions, of dollars are to be invested) depends totally on federal ownership being confirmed by the courts. Apparently, in full expectation of this, the constitutional rules baring improper delegation of powers as between governments have been ignored and simply put, a provincial win would plunge the whole system into chaos.

If, for instance, Nova Scotia should happen to win in court, the Canada Oil and Gas Act would no longer have any possible application to the Nova Scotia offshore and the Agreement's device of a Nova Scotia Act which automatically adopts the provisions of a federal act, as it is amended by the federal parliament from time to time, would no doubt be struck down as unconstitutional, as might all decisions made in the past under that federal act (e.g., the issuance of exploration and production licences). Billions of dollars cannot be invested on such a basis.

If, on the other hand, the Federal Government wins in court, the introduction of legislation into the Nova Scotia legislature as required by the Agreement would be completely without purpose. Nova Scotia would cease to have any possible legal link to its offshore, no matter what the Nova Scotia Agreement states.

In addition to the total uncertainty with regard to the very existence of the agreement over time, there is uncertainty within the Agreement itself as to the continued existence as to any of its parts. In fact, under Schedule I, Ottawa has the right to unilaterally redraw Nova Scotia's offshore boundaries after the agreement has been signed by the Nova Scotia if there is a dispute with an adjacent province.

Nova Scotia has no means to counteract a federal amendment of the legislation under which the Board and COGLA act. Indeed, the agreement explicitly gives the federal government the right to amend the applicable legislation at will (Clause 17).

This weakness has already been clearly demonstrated in May of this year by the unilateral changes in offshore tax regimes contained in Ottawa's National Energy Plan (NEP) Update. Such changes directly affect the size and shape of the total government take and should be subject to the same degree of federal-provincial negotiation and agreement as is present with respect to equivalent changes in federal tax regimes applicable to Alberta's oil industry.

Only entrenchment of an offshore agreement in the Canadian Constitution, as proposed by Newfoundland, will offer an acceptable degree of legal certainty over the long term both to the parties themselves and to the oil and gas industry.

4.2 Term of the Agreement:

The Canada-Nova Scotia Agreement commenced on March 1, 1982, and while it states that it is intended to be of indefinite duration, there is a termination provision which allows either party to give notice of termination, effective three years from the date upon which such notice is given, provided that the termination date is no earlier than March 1, 2024. Thus, the agreement may only last 42 years.

Of course, it is highly misleading to talk of the "term" of such a political agreement in the sense of the certainty that one normally associates with that concept.

In actual fact, given our parliamentary system of government, as pointed out above, since the agreement is not to be constitutionally entrenched (nor apparently even if

eventually ratified legislatively in full by each side., either government could repudiate the agreement at any time by a simple political statement or by legislation as appropriate. This great defect flows inevitably, and unnecessarily, from the method of legal implementation which Ottawa insists upon as described above.

There is a world of difference between potential duration and guaranteed duration. The Nova Scotia Agreement is framed in terms of the former not the latter.

4.3 Most Favoured Province:

If a province other than Nova Scotia, (e.g. Newfoundland) concludes a comprehensive agreement on offshore oil and gas resource management and revenue sharing with the Federal Government prior to January 1, 1985, Nova Scotia may substitute such an agreement in its entirety for the one it signed on March 1, 1982.

The purpose of this clause speaks for itself.

APPENDIX A

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(b)

CANADA - NOVA SCOTIA AGREEMENT ON
OFFSHORE OIL AND GAS RESOURCE MANAGEMENT
AND REVENUE SHARING

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Canada - Nova Scotia Agreement on Offshore
Oil and Gas Resource Management and Revenue Sharing

1. Introduction

The Government of Canada and the Government of Nova Scotia have reached agreement upon the following matters relating to offshore oil and gas resource management and revenue sharing, to be implemented through legislation which the parties shall introduce to Parliament and the Legislature of Nova Scotia respectively. This political settlement of the issues between the two governments has been reached without prejudice to and notwithstanding their respective legal positions. It is the intention of the parties that this settlement shall survive any decision of a court with respect to ownership and jurisdiction in the geographic area identified in Schedule I, hereinafter called the "offshore region".

Management

2. Offshore Development Objectives

- a) The parties agree that the Offshore Development Objectives, hereinafter called "the Objectives", set out in Schedule II, shall constitute a framework for oil and gas resource management decisions in the offshore region.
- b) The parties shall review the Objectives at the end of every five year period, or at any other time upon the request of either party. The Objectives may be amended at any time, with the agreement of both parties.

3. Canada-Nova Scotia Offshore Oil and Gas Board

The parties shall establish a Canada-Nova Scotia Offshore Oil and Gas Board, hereinafter called "the Board".

- a) The Board shall be comprised of five members, three appointed by the Canadian government and two by the Nova Scotia government. There shall be provision for alternate members. The Chairperson of the Board ex officio shall be the Administrator of the Canada Oil and Gas

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Lands Administration (COGLA). All other members of the Board and alternate members of the Board shall be federal or Nova Scotia government employees. The Board shall meet a minimum of six times annually. In addition, at the call of the chair, the Board may meet from time to time at the request of two or more members, after one week notice. Three members, including the chairperson, shall constitute a quorum. The venue of Board meetings will be at the convenience of members, at the discretion of the chair, but with the intention that the Board meet in Halifax as often as practical. The Board shall maintain an office in Halifax. The Board shall establish its own rules and procedures.

- b) The Board shall be responsible to, and shall act under the authority of the federal Minister of Energy, Mines and Resources, hereinafter called "the Minister". The responsibilities of the Board shall be as described in Schedule III. The Minister shall execute all interests except when he has delegated this power to the Chairperson of the Board.
- c) In addition to the above responsibilities, the Board shall:
 - i) assess the continued effectiveness of the Objectives and recommend amendments to the Objectives to both parties;
 - ii) generally, subject to the terms of this agreement, consider, make decisions and inform the Minister, with respect to oil and gas resource management matters set out in the Canada Oil and Gas Act, and the Oil and Gas Production and Conservation Act as amended from time to time with respect to the offshore region, for implementation by COGLA;
 - iii) advise the Minister on other legislation and regulations and generally on amendments to legislation and regulations pertaining to the management and administration of offshore oil and gas resource activities;
 - iv) direct the activities of COGLA and the COGLA Nova Scotia office (CNSO) in respect of the offshore region;
 - v) administer and collect the Basic Royalty and the Progressive Incremental Royalty (PIR).

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- d) With respect to oil and gas resource management decisions of the Board specified below but not including those decisions described in (e), the Nova Scotia members of the Board shall have suspension rights on the following basis:
- 1) For decisions by the Board with respect to any call for proposals, any signing of an exploration agreement, any Canada benefits plan required for any exploration agreement, any signing of a provisional lease, any granting of a production licence, any authorization of a system for producing oil or gas, or any Canada benefits plan required for any authorization of a system for producing oil or gas, the Board members shall, at the request of any two members, indicate their positions by recorded vote;
 - ii) In cases where, in a recorded vote, the two Nova Scotia members of the Board vote against a decision as specified in (1) above, which is nonetheless adopted by majority vote, the Minister shall be so informed, including the reasons for the vote by the Nova Scotia members;
 - iii) In cases where the Minister agrees with the decision of the majority of the Board, he shall so notify the Nova Scotia members of the Board. Within one month of receiving such notification from the Minister, the Nova Scotia members of the Board may give notice to the Minister of invocation of a Nova Scotia suspension right in respect of the decision in question;
 - iv) The invocation of such a suspension right by the Nova Scotia members of the Board shall, subject to (v) below, delay execution of the decision in question for a period to be specified in the notice not to exceed three months in respect of any Canada benefits plan, six months in respect of any call for proposals, any exploration agreement, or any provisional lease, or any production licence, and one year in respect of any authorization of a system for producing oil or gas, provided that in respect of any exploration agreement and the required Canada benefits plan the periods of delay shall not exceed in total six

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months, and provided that in respect of any authorization of a system for producing oil or gas and the required Canada benefits plan the periods of delay shall not exceed in total one year.

- (v) The periods of delay resulting from the exercise of suspension rights by the Nova Scotia members of the Board on a Canada benefits plan, exploration agreement, provisional lease, production licence, or authorization of a system for producing oil or gas, in respect of a specific interest and any succeeding interest shall not exceed in total 18 months.
- vi) In the intervening period of delay, the Minister and the Nova Scotia members of the Board shall make every effort to reach agreement, and if successful the suspension shall be lifted forthwith. If agreement is not possible, the Minister's decision shall be executed at the end of the applicable delay period.
- e) In the case of the renegotiation of an interest or right under the Canada Oil and Gas Lands Regulations in respect of which a decision of the Board is made on any signing of an exploration agreement, any Canada benefits plan required for any exploration agreement or any provisional lease:
 - i) the Nova Scotia members of the Board shall have a suspension right to be exercised in the same manner as under (d) above with such modification as the circumstances require. The effect of such a suspension right shall be to delay approval of any such exploration agreement, Canada benefits plan required for any such exploration agreement, or provisional lease, for a period not to exceed three months, provided that the periods of delay shall not exceed in total three months.
 - ii) in the intervening period, the Minister and the Nova Scotia members of the Board shall make every effort to reach agreement and if successful, the suspension shall be lifted forthwith. If, however, an agreement is not possible, the Minister's decision shall be executed at the end of the applicable delay

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- 111) in respect of lands for which Nova Scotia rights or overlapping federal and Nova Scotia rights were in force on January 1, 1982, the holders of such rights shall be accorded standing under the Canada Oil and Gas Act with respect to negotiation of an exploration agreement or the obtaining of a provisional lease under that Act in respect of all or some part of those lands as the case may be.
- f) 1) Where in respect of any matter the Minister does not agree with a decision of the majority of the Board or in the absence of a decision by the Board, the Minister may make a decision which shall substitute for that decision of the Board, or may make a decision in the absence of a decision of the Board. Notice of such a Ministerial decision shall be given within one week after the Minister has been informed of the Board's decision or within one month after the Minister requests a decision of the Board for which none has been forthcoming, and such decision shall become effective one month after such notification to the Board by the Minister.
- 11) In any case where a Ministerial decision is substituted for a Board decision, or where the Minister makes a decision in the absence of a decision of the Board, with respect to a Canada benefits plan, a call for proposals, the signing of an exploration agreement, the signing of a provisional lease, the granting of a production licence, or authorization of a system for producing oil or gas, the Nova Scotia members of the Board may invoke the applicable provincial suspension right as specified in d) or e) above with such modifications as the circumstances require.

4. Canada Oil and Gas Lands Administration (COGLA)

COGLA shall be the agency designated to administer oil and gas resource activities in the offshore region. With respect to those matters for which the Board has responsibility, COGLA shall report to the Board.

- a) COGLA shall provide regular information reports to the Board, and subject to the provisions of section 3 above, implement decisions of the Board

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and of the Minister, on matters pertaining to the management and administration of oil and gas resource activities in the offshore region.

- b) COGLA shall provide secretariat and staff support for the Board.
- c) A Nova Scotia representative shall have the right to participate, in an advisory capacity, in COGLA's dealings with industry, and shall have the right to receive all information from COGLA on matters pertaining to management and administration of oil and gas resources in the offshore region. While not limiting the foregoing, specifically the Nova Scotia representative shall receive all information from COGLA pertaining to Canada Benefits plans as they relate to Nova Scotia, so as to enable timely consideration of plans by the appropriate provincial agencies, including the Nova Scotia Petroleum Directorate.
- d) COGLA staff may include, with the agreement of the parties, employees seconded from the Nova Scotia public service.

5. Nova Scotia Petroleum Directorate (NSPD)

The NSPD is the agency designated by the Nova Scotia Minister of Mines and Energy to co-ordinate the participation by the Nova Scotia government in the implementation of the agreement.

6. COGLA Nova Scotia Office (CNSO)

COGLA shall establish a Nova Scotia office (CNSO) which will be fully involved in all of the administrative responsibilities of COGLA with respect to oil and gas activities in the offshore region.

- a) The functions of the CNSO shall include, inter alia:
 - (i) supervision and inspection of offshore oil and gas resource activities;
 - (ii) receipt and curation of information and materials from industry operations;
 - (iii) laboratory analysis of reservoir rocks and fluids;

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- (iv) geochemical, sedimentological and biostratigraphic studies on well samples;
 - (v) determination of reserves of oil and gas discoveries;
 - (vi) technical review of industry submissions;
 - (vii) monitoring and reporting on industry compliance with approved plans;
 - (viii) preparation of studies requested by the Board;
 - (ix) technical review of rate of production and drilling programs;
 - (x) appropriate land administration functions.
- b) Before appointing the director of the CNSO, the Minister shall receive advice from the Board. The director of the CNSO will report functionally to the chairperson of the Board.
- c) The CNSO shall be comprised of employees of the federal public service as well as any employees seconded, with the agreement of both parties, from the Nova Scotia public service.

7. Public Review Process

As a matter of priority, the Board shall consider and make a recommendation with respect to the institution of an advisory process for public review of production system options with respect to particular development proposals. Public review shall be held in a timely way before the authorization of a system for producing oil or gas, and shall take place in Nova Scotia under the auspices of the Board.

8. Environmental Protection

- a) The federal and provincial Ministers of Environment and the federal Minister of Fisheries and Oceans shall receive copies of all applications for offshore rights and activities;
- b) The parties shall establish a cooperative environmental assessment hearing process which meets both the federal Environmental Assessment

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Review Process (EARP) requirements and Nova Scotia environmental assessment requirements;

- c) All environmental standards shall be reviewed by the Board and other appropriate federal and provincial agencies before implementation. Fulfilment of environmental terms and conditions shall be monitored by appropriate federal and provincial agencies.

9. Protection of the Fishery

- a) The federal and provincial Ministers of Fisheries shall receive copies of all applications for offshore rights and activities;
- b) A joint Nova Scotia-Canada fisheries advisory committee respecting the offshore region shall be established. The committee shall include representatives of both parties and of fishermen and the fishing industry to give advice on matters relating to the fishery.

10. Liability of Operators

The Board shall make recommendations to the Minister concerning policy and regulations with respect to the liability of operators.

11. Supply Security

The parties agree to ensure that to the extent that hydrocarbons are produced from the offshore region and are required to meet end use consumption demand in Nova Scotia and to meet the feedstock needs of existing industrial facilities in Nova Scotia, such hydrocarbons are made available for these purposes on a commercial basis before their sale is authorized to purchasers outside Nova Scotia. Similarly, feedstock availability shall be ensured for new industrial facilities in Nova Scotia ~~required~~ provided such feedstock is excess to feedstock required to meet the demand of presently existing industrial capacity in eastern Canada.

12. Natural Gas Exports

- a) The Government of Canada intends in the exercise of its authority over natural gas exports, and

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consistent with the provisions of the Natural Energy Board Act, to accord fair and equitable treatment as between producers in the offshore region and other Canadian producers.

- b) Subject to considerations of overriding national interest, if the National Energy Board determines that there is an exportable surplus, it is the intention of the Government of Canada to authorize additional exports.

Crown Participation

13. Crown Share

The parties appreciate the advantages of being directly involved in management decisions made by operators of offshore production projects. Therefore,

- a) Prior to transferring or disposing any Crown Share (Sections 31 and 32 of the Canada Oil and Gas Act) in the offshore region, the Nova Scotia government shall have a right to acquire, subject to b, and c below, up to
 - i) a fifty percent portion of the Crown Share, in respect of a natural gas field, and
 - ii) a twenty-five percent portion of the Crown Share in respect of an oil field.
- b) Terms and conditions of the acquisition, including the price, interest and payment schedule, shall be determined by agreement of the parties on a basis which reflects the costs to the federal government in respect of the Crown Share as described in Schedule IV. Payment by the Nova Scotia government shall be effected from future production revenue on the basis described in Schedule IV.
- c) If during the ten years following the date of purchase the Nova Scotia government decides to dispose of all or any part of the interest it has acquired, the federal government shall have an opportunity to purchase the interest at a price equivalent to the amount paid of the purchase price plus improvements.

14. Crown Corporations

- a) It is not the intention of the federal government in the management of the offshore region to make available substantial land interests to a federal or provincial Crown corporation or other federal or provincial government entity, for purposes of subsequent retransfer to other private or public entities. Any interests issued to a Crown corporation or other entity shall, upon acquisition, be subject to the provisions of the Canada Oil and Gas Act and the Oil and Gas Production and Conservation Act as they may be amended from time to time.
- b) Nova Scotia and federal Crown corporations involved in offshore oil and gas resource activities in the offshore region shall either be subject to all taxes, royalties and levies or shall make payments in lieu thereof.

· Revenue Sharing

15. Revenue Sharing

In consideration of the purposes of the Agreement, as set out in Section I, it is the intention of the parties that in any period when the Nova Scotia government's fiscal and economic capacity does not exceed the level specified in paragraph d) below, to the extent that resource revenues from the offshore are available to governments, these revenues should flow to the government of Nova Scotia, as if the resource were located on land. In the event that the fiscal and economic capacity of the Nova Scotia government rises to a level higher than that specified in d) below, the intention is that resource revenues from the offshore region should be reduced only gradually to ensure that Nova Scotia's fiscal and economic gains are lasting.

- a) The parties shall establish a Canada-Nova Scotia Development Fund to defray infrastructure costs related to Venture and other resource activity in the offshore region incurred by the Nova Scotia government in the period before oil and gas production from the offshore commences.
- i) The Nova Scotia government shall propose expenditures from the Fund. Such expenditures shall be subject to approval by the parties.

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- ii) Contributions to the Fund shall be advanced by the federal government in the following amounts:

\$50 million in April, 1984
\$50 million in April, 1985
\$50 million in April, 1986
\$50 million in April, 1987

for a total of \$200 million.

- iii) The federal government will be repaid for such advance contributions from the Nova Scotia Offshore Oil and Gas Resource Revenue Fund, in ten equal annual instalments, commencing in the year after first production from the offshore region commences.

- b) The parties shall establish two additional funds, by legislation, in respect of Education and Training, and Research and Development. These funds shall be administered on a joint basis by the appropriate federal and provincial agencies. The funds shall be financed by a levy on operators in the offshore regions divided equally between the funds, unless an alternative approach is recommended by the Executive Committee on Economic and Social Benefits (Section 22 below).

A cap on the levy shall be established such that the fund will not appreciably exceed the flow of expenditures.

- c) Revenues to be shared with the Nova Scotia government shall include the following "offshore revenues":

- i) the proceeds of the basic royalty, as specified in the Canada Oil and Gas Act;
- ii) the proceeds of the progressive incremental royalty (PIR), as specified in the Canada Oil and Gas Act;
- iii) revenues equivalent to those which would be generated by the provincial corporate tax at

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the generally prevailing rate established in the Nova Scotia Income Tax Act as may be amended from time to time, if the area to which this tax applies were extended to include the offshore region, and subject to the regulations under the Income Tax Act that determine how a corporation's income for purposes of income tax is allocated among the various provinces where it operates;

- iv) revenues equivalent to those which would be generated by a Nova Scotia retail sales tax, if this tax were extended to include the offshore region.
- v) the proceeds of any bonus payments;
- vi) the proceeds from rentals and license fees to the extent that these instruments generate revenues in excess of the administrative costs pertinent to the offshore region;
- d) In any year the Nova Scotia government share of the offshore revenues specified in c) above shall equal 100% provided, in that year, the Nova Scotia government's per capita fiscal capacity, including its share of offshore revenues, does not exceed 110% of the national average per capita fiscal capacity plus 2 percentage points for every percentage point by which Nova Scotia's average annual unemployment rate exceeds the national average annual unemployment rate. Per capita fiscal capacity shall be calculated according to Schedule V.
- e) To the extent that the revenues in (c) above are insufficient to satisfy the provisions of (d) above, the province's share shall include proceeds of the PGRT in an amount equal to the lesser of:
 - (i) the total amount of the proceeds of the PGRT; or
 - (ii) the proceeds of the PGRT required to satisfy the provisions of (d) above.
- f) The Nova Scotia government shall continue to receive all of the offshore revenues specified in c) above which are required to satisfy the provisions of d). In addition, revenues specified in c) above which are not required to

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satisfy the provisions of d) above shall be defined as the first tranche of incremental revenues and shall be shared with the Nova Scotia government according to the following formula: if the Nova Scotia government's per capita fiscal capacity, including its share of offshore revenues, is more than 110% of the national average per capita fiscal capacity plus 2 percentage points for every percentage point by which Nova Scotia's average annual unemployment rate exceeds the national average annual unemployment rate, but less than 120% of the national average per capita fiscal capacity plus 1 percentage point for every percentage point by which Nova Scotia's average annual unemployment rate exceeds the national average annual unemployment rate, the Nova Scotia government share of the first tranche of incremental revenues shall be 80%; until the Nova Scotia government's per capita fiscal capacity reaches 120% of the national average per capita fiscal capacity plus 1 percentage point for every percentage point by which Nova Scotia's average annual unemployment rate exceeds the national average annual unemployment rate.

- g) The Nova Scotia government shall continue to receive all of the offshore revenues specified in c) above which are required to satisfy the provisions of d) and f). In addition, revenues specified in c) above, which are not required satisfy the provisions of d) and f) above, shall be defined as the second tranche of incremental revenues and shall be shared with the Nova Scotia Government according to the following formula: if the Nova Scotia government's per capita fiscal capacity, including its share of offshore revenues, is more than 120% of the national average per capita fiscal capacity plus 1 percentage point for every percentage point by which Nova Scotia's average annual unemployment rate exceeds the national average annual unemployment rate, but less than 130% of the national average per capita fiscal capacity, the Nova Scotia government share of the second tranche of incremental revenues shall be 50% until its per capita fiscal capacity reaches 130% of the national average per capita fiscal capacity.

- h) If the Nova Scotia government's per capita fiscal capacity, including its share of offshore

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revenues, is more than 130% of the national average per capita fiscal capacity, it shall continue to receive all of the offshore revenues specified in c) above which are required to meet the provisions of d), f) and g). In addition the Nova Scotia government shall continue to receive revenues equivalent to the provincial corporate tax and retail sales tax as specified in c) iii) and iv) above.

- i) In no case shall the total offshore revenues flowing to the Nova Scotia government have the effect of raising the Nova Scotia government's fiscal capacity beyond 140 percent of the national average per capita fiscal capacity.
- j) Offshore revenues shall be collected as specified in the appropriate federal legislation. The Board shall administer the basic royalty and the PIR. The Nova Scotia government share of these revenues shall be credited to an account known as the Nova Scotia Offshore Oil and Gas Resource Revenue Fund established by legislation.

Authority will be included in the legislation to ensure that disbursements from the Fund shall be remitted automatically to the Nova Scotia government, provided that payments have been made in accordance with a) above.

- k) The provisions of this section shall apply only if upon the date of signing this agreement the per capita fiscal capacity of the Nova Scotia government does not exceed 100% of the national average per capita fiscal capacity.
- l) The sharing of revenues between the parties shall be reviewed by the parties five years after oil or gas production from the region begins, and at five year intervals thereafter.

16. Pricing

The wellhead price for oil and gas produced from the offshore region will be established by the federal government, after consultation with the Nova Scotia government.

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Implementation

17. Legislation

A single set of resource management, fiscal and other legislation and regulations pertaining to offshore oil and gas resource activity shall apply in all offshore areas of Canada, although variations in specific regulations and policy guidelines may be appropriate for different areas.

- a) The Canadian Government shall ask Parliament to amend the Canada Oil and Gas Act and any other relevant legislation as necessary and appropriate to give effect to the agreement.
- b) The federal government shall notify and consult with the Board with respect to any proposed new legislation and regulations pertaining to offshore oil and gas resource management.
- c) The Nova Scotia government shall ask the provincial Legislature to adopt the Canada Oil and Gas Act and the Oil and Gas Production and Conservation Act, as they may be amended from time to time, with such modifications as may be necessary in respect to the offshore region.
- d) The Canadian government shall ask Parliament to extend its laws to apply to activities in the offshore, and to apply to the offshore region such Nova Scotia laws as may be specified under such legislation.
- e) The federal courts shall be invested with jurisdiction in the offshore region in respect of any matter to the same extent as if the matter had arisen within their ordinary jurisdiction. The provincial courts shall be invested with jurisdiction in the offshore region in respect of any matter arising under the laws made applicable by Parliament to the offshore region to the same extent as if the matter had arisen within their ordinary territorial jurisdiction. For the purpose of this paragraph, the offshore region shall be deemed to be within the territorial limits of the County of Halifax.

18. Transitional Provision

The parties agree that in the period between entering into this agreement and the enactment of the necessary legislation to give it effect, the parties shall govern themselves in accordance with spirit of the agreement.

Venture Natural Gas

19. The parties agree that for both energy and economic development reasons:

- a) the exploration and delineation activity required to prove up the threshold volumes required for development of the natural gas reserves of the Venture field should proceed without delay;
- b) the parties shall examine pricing, fiscal and market issues, and make such adjustments and arrangements as may be appropriate with a view to facilitating development of the Venture field on an economic basis;
- c) the operator should submit a development plan to the appropriate regulatory authority as soon as possible.

Transportation

20. Without prejudice to decisions on the most appropriate mode for transporting oil and gas from the offshore region:

- a) The parties agree that an application for a certificate for any new natural gas or oil trunkline bringing gas or oil from the offshore region into Nova Scotia, and including any extensions of the trunkline within the province shall provide an option for the Nova Scotia government to participate, on a commercial basis, in an interest of up to 50%.
- b) Pipelines connecting oil or gas production facilities in the offshore region with the Province of Nova Scotia shall be regulated under the applicable federal legislation.

Canada and Nova Scotia Benefits

21. Objectives

The parties share the objective that Nova Scotians and all Canadians should secure optimum benefits from offshore oil and gas resource activity.

- a) In the review of Canada benefits plans, the parties shall give first consideration to services provided from within Nova Scotia and to goods manufactured in Nova Scotia, but only if such goods and services are competitive in terms of fair market price, quality and delivery.
- b) The Canada benefits plans shall include employment and training plans. Subject to national policies in support of labour force mobility in Canada, including affirmative action programming, a priority of the parties shall be to encourage the hiring and training of individuals from the local area who are qualified.
- c) Training programs must be provided by industry and governments so that Nova Scotians have a fair chance to obtain the more technical and higher paying jobs. The parties shall undertake a review of key shared Federal-Provincial training programs with a view to re-orienting their direction, if appropriate, toward new opportunities.
- d) Institutions located in Nova Scotia shall be given an opportunity to participate in private and governmental research and development relating to petroleum in the offshore region.

22. Canada-Nova Scotia Executive Committee on Economic and Social Benefits

Each party shall designate a representative to co-chair a Canada-Nova Scotia Executive Committee on economic and social benefits related to offshore oil and gas resource activities.

- a) The terms of reference of the Executive Committee shall be:

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- i) to prepare Social and Economic Development Objectives for recommendation to the parties, including but not limited to the use of labour, goods and services, education and training of personnel, and research and development;
 - ii) to propose an ongoing process to ensure effective consultation and cooperation between the parties with respect to the economic and social responsibilities of each government;
 - iii) to identify for the parties, possible initiatives to meet the proposed Social and Economic Development Objectives.
 - iv) to report to the parties by January 1, 1983 on the matters identified in i), ii) and iii) above.
 - v) to assess the financial implications for the parties of related infrastructure development costs.
- b) The Executive Committee shall work in close collaboration with the Board.

Term

23. a) This agreement commences on March 1, 1982. It is the intention of the parties that this agreement should be of indefinite duration, except as otherwise provided.
- b) Either party may give notice of termination of this agreement, effective three years after the date upon which such notice is given, provided that the effective termination date is no earlier than March 1, 2024.

Sable Island

24. The authority of the Minister under the Canada Oil and Gas Act in respect of the area inside the line of low tide elevation of Sable Island which is within the province of Nova Scotia shall be exercised by the Minister of Mines and Energy of Nova Scotia. Further, to the extent that bonuses, rentals, fees, deposits, basic royalty and progressive incremental royalty are collected in respect of any interest on Sable Island, as described

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in Schedule 1, an amount equivalent to those amounts and revenues specified in paragraphs 13 c) iii) and iv) shall be paid to Nova Scotia. Notwithstanding Section 13 of this agreement, these revenues shall flow in their entirety to the provinces for the duration of this agreement.

Most Favoured Province

25. With respect to any comprehensive agreement on offshore oil and gas resource management and revenue sharing concluded with a province other than Nova Scotia before January 1, 1985, the Nova Scotia government may substitute the latter agreement in its entirety for the present agreement in its entirety.

Dated at Ottawa, Ontario this ____ day of _____, 1982.

The Government of Canada

Pierre Elliott Trudeau
Prime Minister of Canada

The Government of Nova Scotia

John Buchanan
Premier of Nova Scotia

SCHEDULE I

AREA COVERED BY THIS AGREEMENT

Offshore Region

The outer limits of the offshore areas within which this agreement applies are as follows, provided that if there is a dispute as to these boundaries with any neighbouring jurisdiction, the federal government may redraw the boundaries after consultation with all parties concerned:

- (N.B.) The boundary in Northumberland Strait runs from the mouth of Tidnish River due N to centre line of Baie Verte; thence easterly to the midpoint between Coldspring Head and Cape Tormentine; thence north easterly to the midpoint between Brocklesby Head and Coldspring Head;
- (P.E.I.) From this point the boundary runs easterly to the midpoint between Cape Cliff and Rice Point; thence easterly to the midpoint between Cape John and Prig Point; thence easterly to the midpoint between Caribou Island and Wood Island; thence N of E to a point midway between the northerly point of Pictou Island and the southerly point of Cape Bear Peninsula; thence easterly to the midpoint between Murray Head and Livingstone Cove; thence north-east to the midpoint between East Point (P.E.I.) and Sight Point; thence northeasterly in the direction of the midpoint between White Capes and Entry Island (P.Q.) but terminating at an east-west line through the midpoint between Cable Head and South Cape;
- (P.Q.) From the above point the boundary runs northeasterly to the midpoint between the south-east corner of Amherst Island and White Capes; thence northeasterly to the midpoint between cape St. Lawrence and East Point; (Magdalen Islands); thence northeasterly to the midpoint between St. Paul Island and East Point; thence northeasterly to the midpoint between Cape Anguille and East Point;
- (Nfld.) From this point the boundary runs southeasterly to the midpoint between St. Paul Island (Nova Scotia) and Cape Ray (Newfoundland); thence to a point midway between Flint Island (Nova Scotia) and Grand Bruit

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(Newfoundland); thence southeasterly to the outer edge of the continental margin;

(Continental margin)

From this point, the boundary runs westerly along the outer edge of the continental margin to the Single Maritime Boundary between Canada and the United States;

(Single Maritime Boundary)

From this point the boundary runs westerly along the Single Maritime Boundary to the point where it intersects the boundary drawn in the Bay of Fundy;

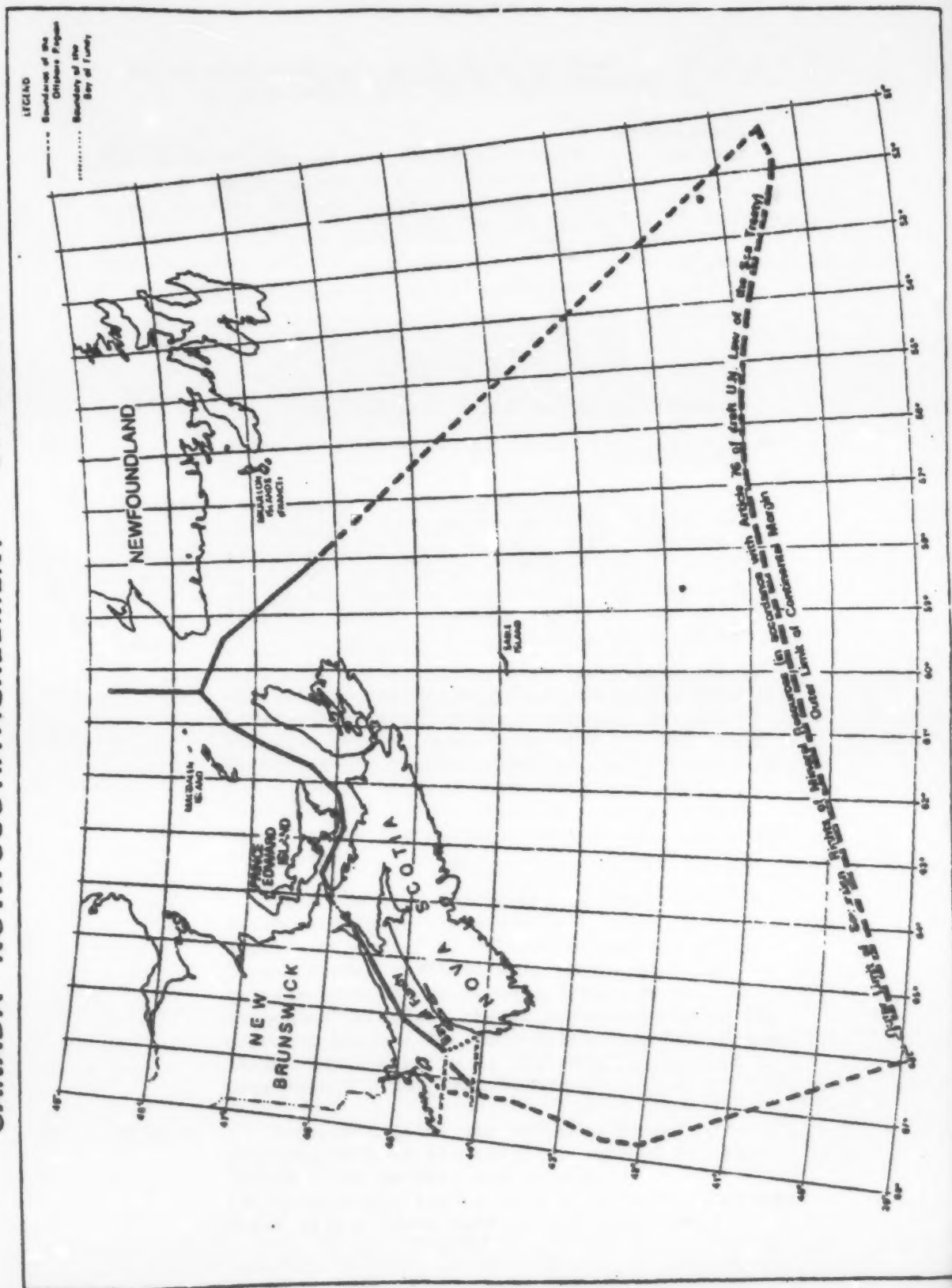
as generally shown on the attached map.

Sable Island

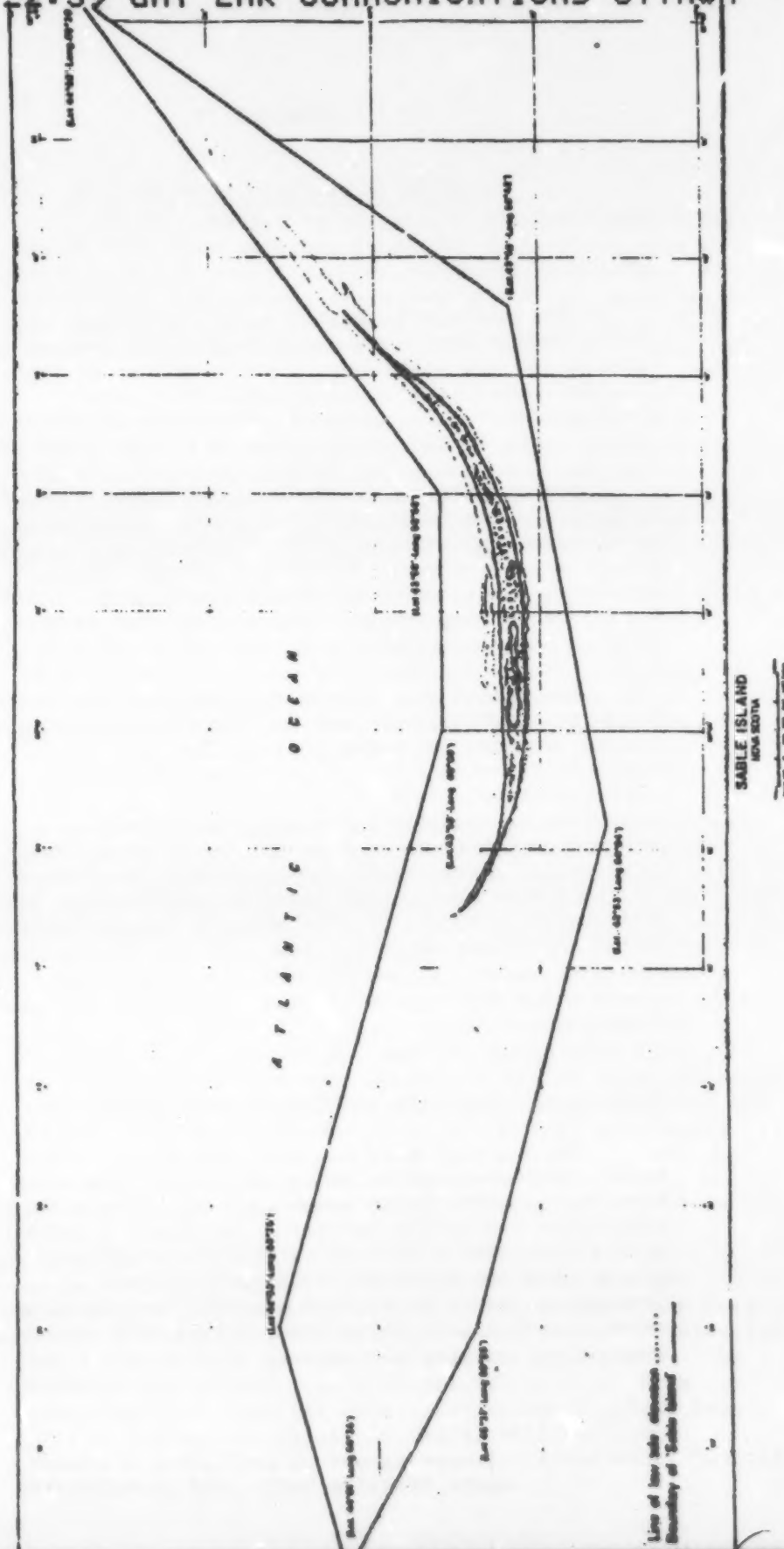
For the purposes of this agreement, because of the unique geographical characteristics of Sable Island resulting in its movement over time, the term "Sable Island" shall be deemed to include the area shown on the attached map. The area was determined by the parties after review of the historic "footprint" of the Island and the existing bathymetric lines surrounding the Island.

(1-a)

CANADA - NOVA SCOTIA AGREEMENT - OFFSHORE REGION



(1-b)



SCHEDULE II

OFFSHORE DEVELOPMENT OBJECTIVES

The Opportunity

The waters off Canada's east coast have traditionally been a source of employment, income and opportunity for Canadians. They have been an important link in domestic and international trade and communications. For generations, fishermen have earned and continue to earn their livelihood from these waters.

The offshore will offer a significant contribution to Canada's energy security and to the economic development and prosperity of Canadians living in Nova Scotia and elsewhere. For Nova Scotians, development of offshore energy resources offers a unique opportunity to build the lasting social and economic structures that can help to shape a prosperous future.

The Canada-Nova Scotia Agreement on Offshore Oil and Gas Resource Management and Revenue Sharing establishes a strong, cooperative management regime capable of vigorously pursuing and harmonizing these energy and development objectives in a manner consistent with the interests and responsibilities of each government, and of industry, as well as of Nova Scotians and all Canadians.

In Nova Scotia many onshore opportunities will be provided as a result of offshore oil and gas resource activity. These opportunities will include new jobs and training in new skills, new business opportunities for industry and entrepreneurs, and significant new government revenues.

Management Initiative and Pace of Development

The scale of offshore projects and of their potential impacts makes it essential that the Canadian and Nova Scotia governments maintain a significant degree of initiative and policy control. The Canadian and Nova Scotia governments have established a management regime giving them the capacity to control the pace of development so as to be in a position to promote actively economic and social objectives, rather than simply to respond to industry's proposals.

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Pacing elements in the management framework include making available offshore lands for exploration, the negotiation of conditions in exploration agreements, the review and approval of development plans, the approval of the commencement of production from new fields, as well as the control of production rates from particular fields.

The offshore management regime also enables the Canadian and Nova Scotia governments to achieve other public objectives relating to the offshore including education and training of personnel, research and development, operational safety in the offshore, protection of the environment and the fisheries, and conservation of the offshore oil and gas resources.

The offshore management regime requires industry to submit "Canada benefits" plans which should include proposals responsive to the objectives of both the Canadian and Nova Scotian governments before approval of offshore oil and gas exploration, development and production activities. These plans must specifically include optimal benefits for Nova Scotians as well as for other Canadians.

Ultimately, decisions affecting pace of development must reconcile energy security, industrial benefits, employment and Canadian participation objectives.

a) Energy Security

Eastern offshore oil and gas have an important role to play in terms of the 1990 oil self-sufficiency target which is shared by all Canadians and their governments. In light of the wealth of Canada's energy resources, continued dependence upon imports of oil is unnecessary. Steps which have been taken to secure energy supplies for Canada include the provision of world-level prices and other investment incentives for new production, and the establishment of programs to increase conservation, energy efficiency and the substitution of energy alternatives to oil.

Current projections indicate that oil and gas production from the offshore will have an important role to play in meeting this national energy security objective and in addressing broader national economic goals. The availability of oil from conventional sources, from tar sands and from frontier areas such as the Beaufort Sea, Arctic Islands and Mackenzie Delta, will influence Canada's need, from an energy security standpoint, for oil development from other offshore areas.

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Efforts must begin today to ensure continuing self-sufficiency during the 1990s, since most new oil and gas supply projects require lengthy lead times before actual production. This will be achieved in a manner which takes full account of economic and social development opportunities in Nova Scotia, the Atlantic region and Canada as a whole.

b) Industrial Benefits

The pace of offshore development will be consistent with optimal opportunities for Canadian goods and services procurement on a fair and competitive basis. Achievement of this goal will require detailed knowledge of the strengths and potential of industry in Nova Scotia, the region and in other provinces, as well as full and timely knowledge of project sponsor's plans. This will require close continuing contacts with both the project sponsors and onshore industries to integrate project requirements with industrial capacity and opportunities, and to avoid being presented with deadlines or specifications which needlessly preclude the use of Nova Scotia and Canadian labour, goods, and services.

Both governments agree that the people of Nova Scotia should be major beneficiaries of offshore oil and gas activity in the offshore region.

A certain level of offshore activity will be required to enable the development of new competitive industries on the scale required. To ensure appropriate investment commitments in new industrial capacity in Nova Scotia and elsewhere in Canada, it will be important to arrive at a view of a sustainable level of industrial activity related not only to the offshore, but also to other mega-projects so as to maintain an acceptable level of real economic growth.

Potential industrial benefits from offshore activity include:

- the development of locally-based supply and service companies;
- the improvement of the capabilities of all sizes of Canadian engineering and construction firms;
- the building of vessels, rigs and platforms and the fabrication of components;
- the manufacture of equipment with broad applications;
- the downstream utilization of hydrocarbons including production of synthetic fuels and petrochemicals and other related industrial and manufacturing opportunities.

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Companies heavily involved in the development oil and gas fields in the offshore region should plan to develop significant establishments in Nova Scotia. Federal government economic development departments are being strengthened in each province, not only for purposes of economic benefits, but also to ensure effective control over offshore activities and sensitivity to local concerns.

c) Employment

The availability of new employment opportunities related to the offshore is linked directly to the pace of exploration and development activities and opportunities for training. Within the context of the Government of Canada's commitment to mobility of the Canadian labour force, a primary objective of the Nova Scotia government and of the Government of Canada is to ensure that residents of Nova Scotia are trained to meet labour requirements of offshore exploration, development and production and related activities. Companies will be required to submit manpower plans to meet this objective.

d) Pricing and Fiscal Regime

The pricing and fiscal regime for offshore oil and gas must be adequate to encourage development on an economic basis, to meet domestic energy requirements and to provide an appropriate share for governments of the revenues generated.

A difficulty confronting governments and industry alike is the relative scarcity of information about the extent, location and economics of potential commercial offshore reserves. The offshore management regime must provide for the synthesis of new information as it becomes available, and for adjustment to new circumstances.

e) Canadian Participation

A factor to be taken into account in making decisions on the pace of offshore oil and gas resource development is the goal of ensuring a high level of participation by Canadian firms in the offshore. On the one hand, acceleration of offshore activity to a level beyond the availability of Canadian investment capital would have the effect of reducing the proportionate equity share of Canadians in the offshore. On the other hand, in light of the financial incentives available, failure to provide adequate opportunities could lead to inflation in participation costs and would tend to impede progress towards greater Canadian ownership and control.

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f) Environment and Fisheries Protection

The offshore environment, including the rich fisheries, are an enduring aspect of the offshore resource heritage which will not be sacrificed for shorter term offshore oil and gas development considerations. In the tendering and negotiating process the sponsor of a development proposal will be obliged, as a qualifying criterion, to meet stringent baseline environmental requirements, and to demonstrate that the development options being considered are fully consistent with environmental values.

Furthermore, offshore oil and gas resource management legislation and regulations will include rigorous requirements for environmental protection, particularly as regards the responsibilities and liabilities of operators and will provide protection for the fishing industry.

g) Exploration Objectives

Strong incentives have been offered for exploration activity in the offshore, particularly for Canadian-owned firms. The purposes for this exploration are threefold.

For energy security reasons, there is a "need to know" to develop information about the geology and the economic potential of offshore oil and gas resources.

The exploration activity itself sustains a substantial level of industrial activity and provides a significant number of jobs in Nova Scotia, the Atlantic region, and elsewhere in Canada.

Towards the goal of the 50% Canadian participation in the oil and gas industry by 1990, the management regime to which the Canadian and Nova Scotia governments have agreed, including provisions with respect to land tendering and exploration agreements and financial incentives, is one of the main instruments for ensuring that Canadians will participate to the full in the development of Canada's future oil and gas resources.

The management and administrative functions related to the granting of exploration agreements provide some important tools with which to pursue economic and social development objectives. The level of exploration activity and its translation into a production profile, will relate to the selection and extent of exploration lands put out for tender. To encourage new Canadian entrants it will be

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necessary to make some attractive new land available. At the same time, a significant "bank" of untendered eastern offshore lands will be maintained.

Comparatively rapid turnover of lands through the negotiation of exploration agreements will provide ongoing control over the pace of development as more information about the extent of the offshore oil and gas resource base becomes available.

Exploration lands will be made available only to serious explorers; not to speculators who tie up land which would otherwise be available either to active explorers or as part of the untendered "land bank".

h) Development, Production and Marketing Objectives

At the development stage, information will be required on the full range of feasible production and transportation system options. Options will be evaluated not only from the commercial standpoint but in light of their implications for other government objectives of both the Canadian and Nova Scotia governments. In the approval process, standards for evaluating options will be developed with emphasis on such issues as: technical soundness, contribution to new Canadian technology and expertise, potential for fair and competitive sourcing of Nova Scotia and Canadian goods and services, and employment benefits.

Evaluation of development proposals will also address the extent to which production will contribute to sustaining a stable level of economic activity in Nova Scotia and the Atlantic region.

Important contributions to Nova Scotia's economic development may also be effected through use in the province of oil, natural gas and natural gas liquids produced in the offshore region.

SCHEDULE IIIResponsibilities of the Canada - Nova ScotiaOffshore Oil and Gas Board

The Board shall make decisions in respect of the following matters, subject to all of the provisions of this agreement:

	Reference in Canada Oil and Gas Act
I) Minister may consent to appointment of different representatives of a group holding an interest for different purposes	7(1)
II) Minister may enter into an Exploration Agreement	10(1)
III) Review of Canada benefits plans	10(3)
IV) Call for proposals for an Exploration Agreement	11(1)
V) Criteria for selection of proposals for an Exploration Agreement	14(2)
VI) Selection and rejection of proposals for an Exploration Agreement	14(1), 14(2)
VII) Term of Exploration Agreement	16(1)
VIII) Continuation of Exploration Agreement	16(3)
IX) Minister shall grant Production Licence to interest owner or holders where conditions have been met 18(1) to (3)	
X) Extension of the area of a Production Licence	24(3)
XI) Minister may determine whether Production Licence capable of producing oil or gas and hence eligible for renewal	25(2)
XII) Minister may determine date that commercial production begins	25
XIII) Minister may grant licence for subsurface storage of oil or gas	26
XIV) Minister may authorize royalty-free use of oil or gas that is flared or used in operations or for maintenance	40(12)
XV) Minister may set time and place and condition and quality of oil or gas royalty paid in kind	40(13)
XVI) Minister may determine area (ring fence) for determining total eligible investment for PIR purposes	41(5) (d)

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XVI I)	Minister may determine whether exploration costs directly contributed to drilling of discovery well (2 items - (b) and (c) under "eligible costs") Also Minister may determine whether exploration costs incurred after discovery well drilled are eligible costs	41(6)
XVII I)	The Minister shall extend period required to negotiate Exploration Agreement where drilling is underway	
XIX)	Minister may assess or reassess royalty payable	43(1)
XX)	Minister may make declaration of significant discovery	44(1)
XXI)	Minister may provide information to holder required to drill under 45(1), notwithstanding prohibition in S.50	45(2)
XXI I)	Minister may make declaration of commercial discovery	46(1)
XXII I)	Minister may provide information to driller under 47(1) despite S.50	47(2)
XXI V)	Minister may determine rates, times and manner of initial payments into Environmental Studies Revolving Fund	49(4)
XXV)	Minister may determine times and manner that payments shall be made to Environmental Studies Revolving Fund by new holders of Exploration Agreements, and further payments	49(7), 49(11)
XXVI I)	Determine studies under Environmental Studies Revolving Fund	49(9)
XXVI I)	Acceptability of industry information	50(3)(f)
XXVII I)	Definition of delineation well, development well, experimental project	50(4)
XXIX)	Minister may approve sending of summary of agreement or arrangement rather than whole document	52(1)
XX X)	Minister may approve proposed agreement or arrangement	52(2)
XX X I)	Minister may make order prohibiting proposed agreement or arrangement or approving it subject to conditions	52(3)
XXXII)	Agreement for extension of the period for renegotiation under S.63 and 64 when delay not due to interest owner	65
XXXIII)	Minister shall grant Provisional Leases to eligible applicants	66
XXXIV)	Minister may approve manner of selecting lands for Provisional Lease	70(1)
XXXV)	Minister may approve reduction of rentals for Provisional Lease	71(1)

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| XXXVI) | The Minister may order drilling of wells under Provisional Lease | 72(1) |
| XXXVII) | Minister may issue Operating Licence and work authorization | 76-3.2(1) |
| XXXVIII) | Minister shall require submission of plan for Canadian participation satisfactory to himself before issuing work authorization | 76-3.2(2) |
| XXXIX) | Minister may require evidence of financial responsibility from person applying for work authorization, in form and amount satisfactory to Minister | 80-19.3(1) |
| XL) | Minister shall publish report of such enquiry and supply copies as he considers proper | 80-19.4(5)&(6) |

In respect of all other matters requiring Ministerial action the Board shall make recommendations to the Minister.

SCHEDULE IV

Payments for Provincial Portion of the Crown Share

Payments made to interest holders under section 29 of the Canada Oil and Gas Act shall continue to be paid by the provincial Crown corporation as outlined in the Act.

Additionally, payments made by the Government of Nova Scotia to the Government of Canada for the province's portion of the Crown interest will be made according to the following formula.

$$\text{Payment} = \sum_{t=1}^n \left[P_t (1 + r \times (n-t)) \right] \times 2.5$$

where P_t is (provincial portion of the Crown share) $\times$ (25% of eligible costs per month under the Petroleum Incentive Program within the ring fence applied for purposes of calculating the Progressive Incremental Royalty.)

r is .0125

n is the month in which the province assumes the interest

t is the month in which the payments were made

The payment is calculated, at the time of transfer of the Crown share, as the provincial share of the Crown interest multiplied by 25% of eligible costs under the petroleum incentive program times 2.5. These eligible costs should be increased by a factor of 1.25 percent for each full month between the month payments were made on the basis of these eligible costs and the month in which the transfer takes place.

Payments under this formula shall be made, with interest, from the point at which the transfer occurs, calculated at the government borrowing rate. Such payments will be made out of future production revenues commencing after the Crown corporation has recovered its capital costs associated with the provincial portion of the Crown share and in any year payments shall not exceed one half of the net production revenues to the Crown corporation in respect of the provincial portion of the Crown share.

SCHEDULE V

DEFINITION OF FISCAL CAPACITY

For purposes of this agreement, the per capita fiscal capacity of the Nova Scotia government, and of all provinces combined, shall be determined for each fiscal year by means of a "representative tax system" of the kind that will be in effect in the Fiscal Equalization Program of the Government of Canada on April 1, 1982.

- a) For greater certainty, such a representative tax system shall:
 - i) include all provincial and local government revenues from taxation, all provincial and local revenues from natural resources, all other provincial and local government revenues from own sources of a kind that are equalized by the federal government in the Fiscal Equalization Program that will be in effect on April 1, 1982, and all federal revenues from taxation and from natural resources that are shared with provinces;
 - ii) classify the various revenues included in i) above into sources, with a separate source for each category for which there is a distinctive distribution of fiscal capacity among provinces, data are available to provide a common measure of fiscal capacity, and the amount of revenues involved for the provinces as a whole is significant in measuring fiscal capacity;
 - iii) provide a separate and unique measure of fiscal capacity or tax base for each revenue source identified in ii);
 - iv) estimate the revenues of the province, and of all provinces combined, for each revenue source, by applying the average rate of taxation for all provinces for that source to the tax base of the province, and of all provinces combined, for that source;
 - v) sum the estimated revenues of the province, and of all provinces combined, from iv) for all revenue sources included in ii); and

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- vi) determine the total estimated per capita revenues of the province, and of all provinces combined, by dividing the revenue total in v) by the official Statistics Canada estimate of population of the province, and of all provinces combined, as of June 1 of the fiscal year.
- b) In the event of any dispute between the two parties concerning the application of the representative tax system as described above being unresolved, the system as defined in the legislation governing the Fiscal Equalization Program for the most recent year in which such a system is used shall apply, subject to the provision that the coverage of revenues described in i) above shall not be less comprehensive than that contained in the legislation governing the Fiscal Equalization Program for the 1982-83 fiscal year.
- c) Final determinations of per capita fiscal capacity shall be made at the end of each fiscal year. Interim determinations shall be made prior to the final determination at such times as the two parties may from time to time agree, and shall, in each case, be based upon the most recently available data for the fiscal year or a preceding year.

POOR

QUALITY

ORIGINAL